THE

RENT LAW OF BENGAL:

BEING

THE BENGAL TENANCY ACT, VIII OF 1885,

WITH

NOTES, ANNOTATIONS, RULINGS AND RULES OF THE LOCAL GOVERNMENT AND THE HIGH COURT UNDER THE ACT AND BOARD OF REVENUE'S INSTRUCTIONS,

AND

AN APPENDIX CONTAINING THE UNREPEALED REGULATIONS AND ACTS BEARING ON THE RENT LAW,

WITH

A COPIOUS INDEX.

BY

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ABBREVIATIONS.

Agra	...	Agra High Court Reports.
All.	...	Allahabad High Court Reports.
Beng.	...	Bengal Law Reports.
Beng. F. B.	...	" " " Full Bench Volume.
Bomb.	...	Bombay High Court Reports.
Cal.	...	Calcutta Law Reports.
D.	...	Field's Digest of the Rent Law.
Hay	...	Hay's Reports.
Ind. 1 All.	...	Indian Law Reports, Allahabad Series, Vol. I.
Ind. 4 Bom.	...	" " " Bombay Series, Vol. IV.
Ind. 2 Cal.	...	" " " Calcutta Series, Vol. II.
Ind. 3 Mad.	...	" " " Madras Series, Vol. III.
L. R. 2 I. A.	...	Law Reports, 2 Indian Appeals.
Marsh.	...	Marshall's Reports.
Moore	.	Moore's Indian Appeals.
R. C. I.	.	Report of the Rent Commission, Vol. I.
R. J. P. J.	...	Revenue, Judicial and Police Journal.
S. D. A.	...	Sudder Dewani Adalat Reports.
Sel. Rep.	...	Select Reports.
W. R.	...	Sutherland's Weekly Reporter.
W. R. Sp.	...	" " " January—July, 1864
W. R. F. B.	...	" " " Full Bench Volume.
Wym.	...	Wyman's Revenue, Civil and Criminal Reporter.
X.	...	Act X Rulings, or Rent Rulings.

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COMPARATIVE STATEMENT.

Comparative Statement shewing the Sections of the repealed Regulations and Acts and the corresponding Sections of the present Act.

Sections of the repealed Statutes.	Sections of the present Act.
REG. VIII OF 1793—	
51 ...	6, 75
52 ...	75
53 ...	None.
54 (spent)	None.
55 ...	74, 75
64 ...	53
65 ...	None.
REG. XII OF 1805—	
7 (spent)	None.
REG. V OF 1812—	
2 ...	179
3 ...	74
4 ...	None.
26 ...	93, 98(2)
27 ...	98(8)
REG. XVIII OF 1812—	
2 ...	179
3 ...	None.
REG. XI OF 1825—	
4 (1, part)	52
ACT X OF 1859—	
2 ...	None (158)
3 ...	50 (1)
4 ...	50 (2)
5 ...	24, 27
6 ...	20(1), 21(1,2), 116
7 ...	178 (1*a*, 1*b*, 2, 3*a*)
8 ...	42
9 ...	None (158)

Sections of the repealed Statutes.	Sections of the present Act.
ACT X OF 1859—	
10 ...	58 (1),74,75
11, 12 ...	None.
13, 14 ...	None.
15 ...	50 (1)
16 ...	50 (2)
17 ...	30, 52(1*a*)
18 ...	38, 52(1*b*)
19 ...	86 (1, 2, 4)
20 ...	53, 54(3),67
21 ...	44 (*a*),66,89
22 ...	66
23 ...	193
24, 25 ...	None.
27 ...	12—16, 88
28, 29 ...	None.
30 ...	Sched. III, Art 1.
31 ...	None.
32 ...	Sched. III, Art 2 (*b*).
33 ...	None.
34—68 ...	143 (2)
69 ...	145, 187
70—75 ...	143 (2)
76, 77 ...	None.
78 ...	66 (2)
80, 81 ...	None.
82—91 ...	143 (2)
92 ...	Sched. III, Art. 6.
93—105 ...	143 (2)
106 ...	170 (1)
107—109...	None.
110, 111 ...	143 (2)
112 ...	121, 141
113 ...	121
114 ...	141 (1)
115 ...	121
116 ...	125
117 ...	124
118 ...	124, 126

Sections of the repealed Statutes.	Sections of the present Act.
ACT X OF 1859—	
119, 120...	None.
121 ...	136 (1)
122 ...	None.
123 ...	122
124 ...	123,124,127
125—128..	None.
129 ...	128, 130
130 ...	131
131 ...	132, 133
132 ...	134
133 ...	135
134—138...	None.
139 ...	140
140 ...	None.
141 ...	140
142 ...	140
143 ...	140, 186
144 ...	None.
145 ...	186
146 ...	143 (2)
147—152...	None.
153 ...	153
154—160...	143 (2)
161 ...	143 (2)
163—165...	None.
166 ...	195 (*e*)
168 ..	None.
ACT VI B.C. OF 1862—	
1 (spent)...	None.
2 ...	68 (1)
3 ...	68 (2)
4 ...	61 (1*a*) 62(2)
5 ...	62 (2), 63(2) 64 (1)
6 ...	Sched. III, Art. 1 (*a*).
7, 8 ...	None.
9 ...	90, 91
10 ..	103—109

Sections of the repealed Statutes.	Sections of the present Act.
ACT VI B.C. OF 1862—	
11 ...	92 (1)
12 ...	148 (*b*)
13 ...	143 (2)
14 ...	None.
15—17 ...	143 (2)
18 ...	None.
19 ...	3 (16)
20 ...	144
Sched. A	61 (2)
ACT IV B.C. OF 1867.—	
1 ...	None.
2—4 (spent)	None.
5 ...	None.
ACT VIII B. C. OF 1869—	
1 ...	None.
2 ...	None (158)
3 ...	50 (1)
4 ...	50 (2)
5 ...	24, 27
6 ...	20 (1), 21 (1), 21 (2), 116
7 ...	178 (1*a*, 1*b*, 2, 3*a*)
8 ...	42
9 ...	None.
10 ...	None (158)
11 ...	58 (1), 74, 75
12, 13 ...	None.
14, 15 ...	None.
16 ...	50 (1)
17 ...	50 (2)
18 ...	30, 52 (1*a*)
19 ...	38, 52 (1*b*)
20 ...	68 (1, 2, 4)
21 ...	53, 54 (3), 67
22 ...	44 (*a*), 66, 89
23 ...	66, 89
24 ...	None.
25 ...	90

Sections of the repealed Statutes.	Sections of the present Act.
ACT VIII B. C. OF 1869—	
26 ...	12 to 16, 88
27 ...	Sched. III, Art. 1.
28 ...	None.
29 ...	Sched. III, Art. 2 (*b*).
30 ...	None.
31 ...	Sched. III, Art. 2 (*a*).
32 ...	145
33 ...	144
34 ...	143 (2)
35 ...	144
36 ...	143 (2)
37 ...	91
38—40 ...	103—109
41 ...	92 (1)
42 ...	146
43 ...	148 (*b*)
44 ...	68 (1)
45 ...	68 (2)
46 ..	61(1*a*), 62(2)
47 ...	62(2),63(2), 64 (1)
48—51 ...	143 (2)
52 ...	66 (2)
53—56 ...	None.
57 ...	143 (2)
58 ...	Sched. III, Art. 6.
59 ...	163 (3)
60 ...	162
61 ...	143 (2)
62 ...	170 (3), 171, 172
63 ...	170 (1)
64, 65 ...	None.
66 ...	159, 160
67 ...	None.
68 ...	121, 141
69 ...	121
70 ...	141 (1)
71 ...	121
72 ...	125

Sections of the repealed Statutes.	Sections of the present Act.
ACT VIII B. C. OF 1869—	
73 ...	124
74 ...	124, 126
75, 76 ...	None.
77 ...	136 (1)
78 ...	None.
79 ...	122
80 ...	123, 124, 127
81—85 ...	None.
86 ...	128, 130
87 ...	131
88 ...	132, 133
89 ...	134
90 ...	135
91—95 ...	None.
96 ...	140
97 ...	None.
98 ...	140
99—101 ...	None.
102 ...	153 (*a*)
103 ...	143 (2)
104, 105...	None.
106 ...	1 (3)
107 ..	2
108 ..	None.
109 ..	1 (3)
110 ...	195 (6)
111 ...	1 (1)
Sched. A...	61 (2)
ACT VIII B. C. OF 1879—	
1 ...	1 (3)
2 (spent)..	None.
3—5 ..	None.
6—8 ..	104
9 ..	105
10 ..	109
11 ..	None.
12 ...	110
13 ..	113
14 ..	None.

INTRODUCTION.

THE BENGAL TENANCY ACT embodies an endeavour to restore the raiyat to his ancient rights and to give the landlord facility to recover and enhance rent. The urgent necessity of regular collection of revenue during the early years of the East India Company's dominion led in 1793 to the permanent settlement of the land revenue with the former chiefs and tax-collectors. That measure, though equally meant to be a permanent settlement of the raiyat's rent,—as sacred and as inviolable as the zamindar's revenue,—did not accurately define the rights of the raiyat. The Government, however, only reserved to itself the right of interfering for his protection whenever it became necessary. The Tenancy Act is the first serious attempt to assert the right so reserved. But it does not afford to the raiyat that effectual protection which he was entitled to according to his ancient rights and which to a large extent the Bill that was originally introduced into Council was intended to give. It was intended by that Bill to secure to the occupancy-raiyat fixity of tenure, fair rent and free sale, to protect the non-occupancy-raiyat from arbitrary eviction and rack-renting, to facilitate his acquisition of the status of a settled raiyat and to give the under-raiyat, holding under a raiyat at fixed rent, the rights and privileges of the raiyat. In the Act, however, the fixity of tenure of the occupancy-raiyat has been limited to the village alone; his initial rent left to competition; enhancement of his rent made easy without any limit being fixed to it; the value of his occupancy-right thus considerably diminished; and his right to sell his holding left wholly to custom. The non-occupancy-raiyat has fared even worse. The limit of his rent has been struck off; he has been made liable to ejectment on

expiry of a registered or a judicial lease; and, if he refuses to an enhancement demanded, he cannot claim a judicial rent for more than five years. Sub-letting has been expressly legalized; but, with singular inconsistency, the under-raiyat has been deprived of the right to acquire the occupancy status,—a right he partially enjoyed under the old law,—and left altogether unprotected. Thus, though the Bengal Tenancy Act has made substantial improvements on the old law in certain directions, it falls far short of being a final settlement of the disputes between the landlord and the raiyat in Bengal. In what direction legislation will proceed to bring on that settlement, is a question of the future. But it may safely be asserted that, for a sound solution of the rent-question in Bengal, we shall have to revert to the principles of the ancient Hindu times,—to equalize the rent of all classes of cultivators (the occupancy, the non-occupancy, and the korfa raiyat); to fix a maximum limit beyond which the rent of no cultivator may be enhanced; and thus to make the interests of the landlord and the raiyat essentially the same. It is profitable to compare the views on property in land, acted upon in the past by one of the most ancient and most conservative nations of the East and the views on that subject now promulgated by the most radical thinkers of the West. Such a comparison affords additional evidence of the truth of the proposition that, not only is the radicalism of one age but the conservatism of the next, but that the conservatism of an ancient age may seem to be radicalism at the present day.

Though the Tenancy Act cannot be viewed as finally settling the rights and obligations of the landlord and the tenant, it has introduced considerable changes in the law that existed. It will be useful to note here in brief detail the most important of these changes:—

(1) It is sometimes extremely difficult to ascertain whether a tenant is a raiyat or a tenure-holder. But a determination of his status is essential to ascertain

his rights and liabilities against and to his landlord and his sub-tenants. To assist the Courts in this matter a presumption has been enacted that a tenant holding more than 100 bighas of land shall be presumed a tenure-holder.

(2) All notices of enhancement of rent have been abolished, on the ground that a large percentage of enhancement-suits failed in the past, because either notice was not in proper form or its service was not proved. The institution of the enhancement-suit is now notice to the tenant.

(3) A system of official registration of transfer and succession of permanent tenures has now been substituted for registration at the landlord's sherista. The landlord, however, receives notice and may, if so inclined, register them. The system has, further, been extended to holdings at fixed rents.

(4) No enhancement of a tenure-holder's rent may now be had *by Court* within fifteen years of a previous enhancement.

(5) The old principle of the khudkasht raiyat has been recognized. The raiyat has simply to shew that he has held *some* land continuously within the village boundaries for twelve years and he becomes a settled raiyat of the village and acquires rights of occupancy in all lands held within its boundaries.

(6) It is presumed in the raiyat's favour, till the contrary is shewn, that he has an occupancy-right in all lands he is found to be holding.

(7) The raiyat can, in no case, contract himself out of the occupancy-right; nor can he, after the passing of the Act, contract himself out of the important incidents of occupancy-right.

(8) There can be no enhancement of an occupancy-raiyat's rent by contract within fifteen years of a previous enhancement. Nor can there be an enhancement by Court on the ground of a higher prevailing rate or on that of rise of prices within fifteen years of an enhancement by contract or of an enhancement-suit on those grounds either decreed or dismissed.

(9) A strict limit of two annas in the rupee has been fixed to the enhancement that may be had by contract.

(10) The grounds on which enhancement may be had of an occupancy-raiyat's rent have been modified and enhancement by suit made easy.

(11) An occupancy-raiyat cannot now be ejected for arrears of rent; his tenancy has to be brought to sale in execution of a decree for such arrears.

(12) An occupancy-raiyat, or his landlord may now apply for the commutation of a produce-rent to a money-rent.

(13) A non-occupancy-raiyat may be ejected on expiry of lease only if it be a registered or a judicial lease. But this must be in a suit brought within six months after expiry of the lease, and, after service of a notice of ejectment, six months before the expiry of its term.

(14) A non-occupancy-raiyat may not be ejected for refusal to pay an enhancement demanded of him, but the Court shall determine what rent is fair and equitable. He may be ejected only if he refuses to pay such rent; but if he agrees to pay, he shall be entitled to continue in occupation for five years on such rent.

(15) The rent of a non-occupancy-raiyat cannot be enhanced by contract unless it be registered.

(16) An under-raiyat cannot be made to pay more than 50 per cent. over and above the head rent of the raiyat, when there is a registered lease; not more than 25 per cent. over and above the head rent, when there is none.

(17) An under-raiyat cannot acquire an occupancy right unless there is custom to that effect.

(18) Disclaiming the landlord's title and setting up a title in himself or in a third party is no longer a ground for ejecting a tenant.

(19) Rent-receipts should now contain certain specified particulars, and the landlord is bound to keep a counterfoil of such receipt. A receipt not containing the required particulars is presumed to be a receipt of all dues up to date. The penalty for withholding a receipt has been increased.

(20) The landlord is also required to grant the tenant either a statement of account or a discharge in full at the end of the year. He is bound to keep a counterfoil of such statement.

(21) Three new classes of cases have been added when the tenant may deposit rent: (1) when rent-receipt was withheld on a previous occasion; (2) when receipt may not be had from the co-sharers jointly and they have no common manager; and (3) when the tenant has a *bonâ-fide* doubt as to who is entitled to rent.

(22) Interest on arrears has been fixed at 12 per cent. per annum, and this cannot be altered by any contract made after the passing of the Act.

(23) Provision has been made for the appraisement or division of the produce, when rent is so payable, by the aid of the Collector.

(24) The right of the occupancy-raiyat to make improvements has been secured; and he is entitled to recover his outlay in case of eviction. The non-occupancy-raiyat has an absolute right to build a house to live in and to sink wells

for purposes of agriculture; and he is equally entitled to compensation in case of eviction.

(25) Power has been given to the landlord of holdings, on the certificate of the Collector, to acquire lands of such holdings, or for any purpose having relation to the good of the estate, *e.g.*, erection of buildings, or for any religious, charitable or educational purposes.

(26) No sub-lease shall be valid for more than nine years.

(27) Provision has been made for the landlord to enter on a holding when the raiyat abandons his residence without notice and without arranging for payment of rent and the lands of the holding cease to be cultivated.

(28) No tenant can be ejected except in execution of a decree.

(29) No landlord can measure lands in possession of his tenants oftener than once in ten years, except in certain specified cases.

(30) Effective provisions regarding the appointment of a common manager in case of dispute existing between co-owners of an estate or tenure have now been substituted for the incomplete fragment of the old law.

(31) The provisions of Chapter X now replace Act VIII B. C. of 1879 and govern Government Settlements. These provisions also apply to private estates or tenures or their parts, and are the first serious attempt to have a record-of-rights of the tenantry of Bengal.

(32) Provision has been made for the record of private lands of the proprietor. The existing stock of such lands cannot hereafter be increased. All lands are presumed to be raiyati unless the contrary is shewn.

(33) The landlord's power of distraint has been curtailed. Distraint is now a process of the Court; and the landlord, while he cannot resort to it for the purpose of simple oppression, may always use it for the purpose of recovering arrears.

(34) The judicial procedure in case of suits for the recovery of arrears of rent has been abbreviated.

(35) A landlord can no longer harass his tenant by instituting monthly suits for arrears of rent. Three months must intervene between successive suits.

(36) An ejected raiyat is now entitled to compensation for standing crops or to continue in possession till the crops are gathered on payment of rent fixed by the Court.

(37) A trespasser may be sued for fair rent in the alternative of ejectment.

(38) For suits for pattas and kabuliyats have been substituted applications by the landlord or the tenant for determining the incidents of the tenancy.

(39) Tenures sold in execution of decrees for arrears of their own rent shall be put up for sale in the first instance subject to registered and notified incumbrances; and if the bid is not sufficient to liquidate the arrears, it shall be sold on a subsequent day with power to avoid incumbrances. But certain interests, called 'protected interests,' are always saved. These provisions may be extended to occupancy holdings by the Local Government.

(40) No claim may be laid by third parties to tenancies to be brought to sale for their own arrears.

(41) The landlord may bid for and purchase a tenancy to be sold in execution of a decree for its arrears; but the tenant may not.

(42) Minority, insanity or idiocy will not prevent limitation to run in case of a suit for recovery of rent, a suit for ejecting a tenant for breach of condition and a title-suit for recovery of possession of land as an occupancy holding.

(43) The limitation applicable to title-suits for recovery of possession of lands by establishing the occupancy-right has now been fixed at two years from the date of dispossession.

(44) Joint landlords are now required to act either jointly or by a common agent in all matters they are required or authorized by this Act to do.

The above is by no means an exhaustive list of the different changes made in the old law nor anything like an approach to such a list. These have been indicated and explained fully under the several sections of the Act. All that is attempted here is to give a bird's-eye-view of the important alterations. A list of the provisions of the old law omitted in this Act will be found at pp. 415-16.

The importance of the Tenancy Act in the administration of civil justice in Bengal will be understood when it is remembered that suits under the rent-law now form more than 45 per cent. of its total civil litigation. Bearing this fact in mind, the editor has spared no pains to explain clearly and elucidate each section of the Act by reference to the report of the Rent Commission, the provisions of the old Acts and of the different Bills, and the

reports and discussions of the Legislature. The rulings under the old Acts have been arranged according to principles and reproduced under the several sections, it being indicated at the same time how far they have been set aside or modified by the provisions of the Act. To fling these rulings at the reader in a shapeless, chaotic and contradictory mass would have been worse than useless. New questions that are likely to arise under the new or altered provisions of the Act have been proposed and discussed at length. The rules framed by the Local Government and the High Court, the notifications made by the former, and, with their kind permission, the instructions given by the Board of Revenue have been inserted under the respective sections to which they refer. The Regulations and Acts bearing on the rent-law have been printed in the Appendix; and the Index has been carefully prepared so as to be a complete key to the contents of the Act and the notes.

In offering this work to the judicial service and the legal profession, the editor is fully conscious that he will require their indulgence for many shortcomings. In the first edition of a legal treatise defects remain 'despite the bestowal of much honest and painstaking labour.' But he trusts that the work will be accepted as the result of such labour, and will be found to be a useful hand-book on a branch of law which in Bengal is of such wide application.

RUNGPORE,
August 10*th*, 1886.

EDITOR.

ADDENDA.

Since the following pages were printed, the High Court Rules have been finally settled and published. The rules under Chapter XII have been settled exactly in the form in which they had been proposed and in which they have been printed under the respective sections. Of the rules under section 100, (p. 255, *post*), Rule No. 3 has been modified by omitting the words 'if such lease is disapproved by the District Judge' and by adding the words 'by written order' after 'if the District Judge directs,' and a new rule has been added :—"5. No manager shall have power to compromise any suit or relinquish any claim without the express sanction of the District Judge."

THE BENGAL TENANCY ACT,

BEING

ACT No. VIII OF 1885.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

Received the assent of the Governor-General on the 14th March, 1885.

An Act to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the Administration of the Lieutenant-Governor of Bengal.

WHEREAS it is expedient to amend and consolidate certain enactments relating to the law of Landlord and Tenant within the territories under the Administration of the Lieutenant-Governor of Bengal; it is hereby enacted as follows:—

Whereas it is expedient.—This Act embodies an endeavour to redeem a pledge that was given at the time of the Permanent Settlement. The authors of that Settlement defined and ascertained the mutual rights of the State and the revenue-payers or zemindars. They did not settle, define, or ascertain the mutual rights of the zemindars and the raiyats. They settled and defined the mutual rights of the State, and the zemindars by declaring that the amount of revenue payable by the latter, which had formerly been fluctuating or fixed for short term of years, should be fixed for all time and should not be increased by reason of any increase in the area under cultivation. And at the same time, and as part of the same settlement, they formally declared that the zemindars should be deemed to be the proprietors of the soil; or, in other words, they transferred to the zemindars those indefinite proprietary rights in the soil which had formerly been claimed by the State. But they did not settle or define, they did not even ascertain, the rights of the raiyats or occupying cultivators. Those rights were left outstanding and undefined, and the result has been that they have now been obscured, effaced, and in many cases ultimately destroyed.

Act X of 1859.—The Legislature of 1793 satisfied themselves by only reserving to the Government the rights of legislating when necessary for the protection of persons having interest in the soil below those of the zemindars: (sec. 8, Reg. I of 1793.) More than half a century elapsed before any steps were taken to assert this right and discharge the obligation. In 1859, was passed Act X of that year, which introduced important changes in the substantive law of landlords and tenants. As originally introduced, that Act was intended only to amend one particular branch of the Rent Law—that relating to the recovery of rent—but substantive portions were subsequently introduced into it by way of afterthought by the Select Committee. These appear to have been then treated as little more than verbal amendations, but they were afterwards found to have been fraught with important consequences. The term "resident raiyats" had been used in the original Bill to designate the class of persons who were to enjoy occupancy-right. But non-resident raiyats in some cases undoubtedly possessed that right, and in their case it had been usual to apply a twelve years' rule of prescription. In order to include these non-resident raiyats, but not to exclude the resident ones for whom no twelve years' possession was necessary, the twelve years' rule was introduced. That was the intention, but how different was the result! Raiyats, whose very designation in the rural tongue stamped them as occupancy-raiyats, were denied their right and compelled to prove a continuous occupation of specific fields for an uninterrupted term of twelve years. Again, for the "perganá rates" in the original Bill, the expression "fair and equitable rates" was substituted, and some rules were laid down to ascertain the fairness of the rates. And it was out of the enhancement rules that the first serious difficulty in administering Act X of 1859 arose. In *Hills* v. *Iswar Chandra Ghose*, Sir Barnes Peacock decided, in 1862, that "fair and equitable rent," of Act X of 1859, was nothing more or less than the competition rent of the Western economists. This decision did not commend itself as sound to those who were best acquainted with the true position and rights of the Bengal raiyats, and three years afterwards, it was overruled by the High Court, in what is popularly known as the Great Rent Case of 1865. The majority of the Court repudiated the definition of economic rent and the theory that rent ought to be fixed by competition, as inapplicable to the customs and conditions of the country; and they held the words "fair and equitable rent" to mean "that portion of the gross produce calculated in money to which the zemindar is entitled under the custom of the country," and to be equivalent to the varying expressions "perganá rates," "rates" paid for similar lands in adjacent places, and "rates fixed by the law and usage of the country."

Proposed amendment of Act X of 1859.—In the meantime the amendment of Act X of 1859 had been suggested, in 1863, by Sir Barnes Peacock, and also by the Government of the North-Western Provinces. The subject was fully discussed

by the High Court of Bengal and the India Government, and an amending Bill was drawn up by Sir W. Muir, and circulated for opinion in August, 1865. But Sir Cecil Beadon, then Lieutenant-Governor of Bengal, strongly deprecated fresh legislation, and as the decision in the Great Rent Case had laid at rest the most pressing question of the law of enhancement, the Bill was allowed to drop. In 1867, Sir Cecil again represented that any changes in the principles of Act X would then produce undesirable results.

Act VIII of 1869.—Finally, in 1869, by the Bengal Act VIII of that year, the trial of rent suits was transferred from the revenue to the ordinary courts in all districts to which it was extended by the Local Government. This Act embodied with some unimportant exceptions the substantive law of Act X of 1859 which it repealed.

Subsequent measures.—The period from 1870 downwards has been marked, on the one hand, by the incessant efforts of the landlords to obtain higher rents and illegal abwabs, and, on the other, by a determined opposition of the tenants to demands which they conceive unjust. And either party, wherever it is the stronger one, has succeeded to nullify the just rights of the other. Thus, while there is undisputed evidence of oppressive conduct and illegal exactions on the part of the zemindars in Western and Southern Bengal, there have been combinations of raiyats in Eastern Bengal refusing to pay any rent except what *they* consider just. The disturbances, which, in 1873, broke out in the Pubna District, were an exceptionally acute form of the latter kind. The cultivators banded themselves to resist short measurements, illegal cesses, and forced deliveries of agreements to pay enhanced rents. Though the disturbances were put down with a strong hand, the enquiries, which were made, brought into very clear light the substantial character of the tenant's grievances and the need of applying a drastic remedy. The Lieutenant-Governor, Sir George Campbell, expressed his view that, unless the Government were prepared to grapple with the whole of the enormous subject and to take permanent measures to obviate or deal effectually with rent disputes throughout Bengal, it was best to leave the parties to settle their differences as they could, without further interference than was necessary for the maintenance of order.

Both Sir George Campbell and his successor Sir Richard Temple, till 1875, were fully occupied with the affairs of the Behar Famine to have time to undertake such a reform. And the Agrarian Disputes Act was passed in 1876 only to meet emergencies like those of 1873—indications of which were perceptible in Eastern and South-Eastern Bengal. But Sir Richard Temple always intended to undertake the permanent legislation; and, in August, 1876, proposed to introduce a Bill to define the principles on which the right of occupancy-raiyats and tenure-holders should

be fixed, to simplify the procedure for realizing arrears of rent in undisputed cases, and to make the interest of the occupancy-raiyats saleable. But before the proposal had been fully considered, he made over charge to Sir Ashley Eden early in 1877. It was then arranged that the larger amendment of the law should be deferred, and a Bill providing only for the realization of undisputed arrears introduced at once. When, however, the Bill came to be considered, it was found impracticable to confine its scope to the proposed limits, and the majority of the Select Committee recommended that the whole subject of the revision of the Rent Law should be once for all fairly faced. This proposal was supported by Sir Ashley Eden; and, in April, 1879, the Government of India appointed a Commission to prepare a digest of the existing statute and case law and to frame the draft of a consolidating Bill. Meanwhile a Committee of experienced Behar officials, indigo-planters and zemindars had been sitting to consider and devise remedies for the abuses prevailing in the relations between landlords and tenants in Behar. They submitted their report in March, 1879, proposing so many changes in the existing law that they did not consider that the requirements of the case could be properly met by a mere amending law, and therefore recommending that the whole Rent-Law should be recast. The Behar Committee thus arrived at the same conclusion as the Select Committee on the Bill for the speedy realization of undisputed arrears. The report of the Behar Committee was referred to the Rent Commission for consideration. The Commission submitted its report with a draft Tenancy Bill in June, 1880. Sir Ashley Eden accepted that Bill as a reasonable basis for legislation, and placed Mr. Reynolds upon special duty. He prepared a second draft Bill in May, 1881; and, in July of the same year, Sir Ashley Eden submitted his report, with a third draft Bill, embodying the provisions as finally settled by him. The Report of the Bengal Government was submitted by the India Government with their own proposals to the Secretary of State for India in March, 1882. And, following the instructions received from him as to the general lines of legislation, a Bill (No. I) was introduced into the India Council in March, 1883. That Bill, after being twice (No. II and No. III) recast and materially altered, was finally passed by Council as Act VIII of 1885.

It will thus appear that the expediency of a radical revision of Act X of 1859 had been admitted on all hands since 1863, and that since the Pubna riots of 1873, such a revision was recognized to be urgently necessary. The subject received uninterrupted attention from 1879, *i. e.*, for six years before it became law.

Certain enactments.—This Act does not purport to be an exhaustive codification of the law of landlord and tenant. The previous Bills included the law relating to patni and other tenures which are saleable for their own arrears. But it was omitted by the Select Committee from Bill No. III, in order—(1) to

avoid interference at present with the existing law regarding patni tenures, and (2)—to postpone the consideration of any extension of the patni sale law to other tenures to such time when the Bengal Tenures Registration Bill might come for discussion.

The enactments, which are amended and consolidated by this Act, are given in Schedule I. *See* note under section 2, sub-section 1. For enactments not affected by this Act, *see* section 195, and notes thereunder.

Landlord and tenant.—The provisions of this Act properly apply to those cases in which the relation of landlord and tenant exists between the parties, *i.e.*, where it has been created or has continued between them. But under section 157 a trespasser may be sued for rent in the alternative of ejectment. The relation of landlord and tenant exists where it has been created—(A) by an express contract, (B) by an implied contract, and (C) by operation of law.

A—*Express contract.*—Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject. (Section 11, Indian Contract Act IX of 1872.)

Age of majority.—Before the passing of Act IX of 1875, the general age of majority in Bengal for Hindus and Mahomedans was the completion of the 15th year; except persons, subject to the provisions of Act XL of 1858, or to the Court of Wards Act, for whom it was the completion of the 18th year; and for European British subjects and others being neither Hindus or Mahomedans, nor subject to the provisions of Act XL of 1858, or the Court of Wards Act, the completion of twenty-first year. The Indian Limitation Act IX of 1871 again fixed minority to last till the completion of the 18th year. And the Indian Succession Act had a similar rule. For the purpose of attaining more uniformity and certainty, Act IX of 1875 enacted that for all persons domiciled in British India, the age of majority is attained on the completion of the 18th year. From this rule, however, are excepted those persons who have guardians appointed for their person or property by any Court of Justice or who are brought under the charge of the Court of Wards; in their case majority is attained on the completion of the twenty-first year. (Trevelyan's Law of Minority, Chapter I.)

Whether a contract of tenancy made by a minor (lessee or lessor) is only voidable or absolutely void under the Indian Law, is a moot point. Its importance will be understood when it is remembered that a contract, if void, cannot be ratified by the minor on his attaining majority. Under the English Law such a contract is only voidable and not void: (Fawcett, 1871, 5, and Woodfall, 2nd Ed., 61.) Mr. Justice Field gives his opinion (D. 6, note) that the effect of the Indian

Contract Act is to make such a contract not merely voidable but absolutely void. But Sir Richard Garth, *C. J.*, queries (R. C. II. 357) :—

"*1stly.*—Are contracts made by a minor, notwithstanding section 11 of the Contract Act, *absolutely void* or *voidable only* at the minor's option? I should say they are or ought to be *only voidable.*

"Could a lessee, for instance, having taken a lease from a minor and having entered into possession and had the benefit of two lucrative seasons, throw the lease up afterwards whenever it suited his purpose? or could the lessee after having taken possession avoid such lease at all?

"*2ndly.*—Could the minor avoid the lease *before he came of age*, whether the lessee could avoid it or not?

"*3rdly.*—Could not a minor lessee avoid a lease for *the future*, even for necessary lodging? Is he ever liable for necessaries *which have not actually been supplied?*

"As for example, suppose he were to enter into a contract for a supply to him of so many loaves a day for a month, would the contract be binding on him except so far as he had enjoyed the benefit of it? I think not. I consider that the same principle applies to a contract for future lodging. *Hands* v. *Slaney*, 8, Term Reports, 571, which is the case referred to by Woodfall, was an action for *use and occupation.* No doubt a minor would be liable for that. The just and proper rule would seem to be that leases both to and by minors should be voidable only at their option."

Under the Court of Wards Act (IX B. C. of 1879, amended by Act III B. C. of 1881) the Court enjoys all the powers which the ward might, if not disqualified, have exercised : (sec. 14.) It may sanction the giving of leases *or* farms of the whole or part of any property under its charge, as it may judge to be most for the benefit of the property, and advantage of the ward : (sec. 18.) And the manager may, under the orders of the Court, grant or renew such leases *and* farms as may be necessary for the good management of the property : (sec. 40.) (a)

The manager of the estate of a minor, under Act XL of 1858, may grant leases for any period exceeding five years with an order of the Civil Court previously obtained and leases for five years and under, without such order : (sec. 18.)

Sound mind.—If the landlord is a lunatic, his guardian, under Act XXXV of 1858, may grant leases for any period exceeding five years with the order of the Civil Court previously obtained and leases for five years and under, without any such order : (sec. 14.)

(a) 'Leases' and 'farms' being connected once by *or* and again by *and* in these sections, it may be inferred that 'leases' include agricultural and other leases as opposed to farming leases.

Grant in excess of interest.—The general rule is, that a person having a limited interest in land may grant only to the extent and limit of such interest. A lease granted by a Hindu widow is therefore valid only for the life of the grantor. (*Massamat Mohan Koer* v. *Zoraman Sing*, Marsh. 166.) So a mokarari lease granted by an occupancy-raiyat binds him only and is valid so long as his interest lasts ; but it does not affect the right of the zemindar when his interest ceases. (*Damree Sheikh* v. *Bisveswar Lal*, 13 W. R. 291.) Similarly a lease, granted by one having only a limited interest and specifying no term of tenancy, will be construed to have effect only so long as the interest of the grantor lasts. (*Haris Chunder Rai Choudhuri* v. *Srikali Mukerjee*, 22 W. R. 274.)

Where, however, the lessor, after granting a lease in excess of his interest, acquires such excess, the lease is valid as against him for the whole grant. If the lessor by his own act or behaviour leads the lessee to believe that he has such excess interest, the case is a clear one : (sec. 115 of the Evidence Act I of 1872.) But it is not so when the lessor and the lessee collude with each other to defraud a third person, and the lessor afterwards acquires the excess interest. It is submitted that in such a case the Court should grant relief to neither party, and the estoppel should be mutual.

The same principle ought to apply to the case where the grantor, at the time of making the grant, had not the property of which or out of which he professed to make the grant and afterwards came to possess it. He should be compelled to make good his grant, unless, of course, something subsequent to the original transaction came in to make it inequitable that he should be called upon to do so. (Phear, J. in *Syad Amir Ali* v. *Hira Sing*, 20 W. R. 291.)

In this connection may be noted that leases of Ghatwali lands in the District of Birbhum for periods extending beyond the lifetime or incumbency of the grantors, when granted for the working of mines or for clearing jungles or for erection of dwelling-houses or manufactories or for tanks, canals and similar works, are valid, if such leases are approved by the Commissioner of the Division, by an endorsement on the lease under his signature. (Act V of 1859, section 1.) These cases are hardly an exception to the general rule that a lessor may not grant a lease in excess of his interest. The deficiency in the lessor's interest, is made up by the endorsement of the Commissioner who acts on behalf of the State which possesses the remaining interest.

B—*Implied contract.*—Utbandi holdings are the most common examples of implied contracts. The raiyat cultivates lands, presuming the consent of the landlord and pays according to the area cultivated. *Nityananda Ghose* v. *Kissen Kisore* (W. R. Sp. X. 82) is, as far as the facts may be gathered from the judgment, an extreme case in which an implied contract of tenancy was inferred. The defendant

cultivated land which was admittedly within the zemindari of the plaintiff. When sued for a kabulyat and ascertainment of rent, he claimed to have come by the land by exchange with the zemindar and set up adverse possession. The plea of exchange was found false, and the Court refused to consider him a trespasser. The Court remarked "Here (in Bengal) it is a very usual thing for a man to squat on a piece of land and to take into cultivation an unoccupied or waste piece of land. Tenancy, in a great many districts in Bengal, commences in this way ; and where it does so commence, it is presumed that the cultivator cultivates by permission of the landlord and is under obligation to his landlord to pay him a fair rent when the latter may choose to demand it. Thus the established usage of the country regards these parties as landlord and tenant, and unless the landlord chooses thus to regard him, the cultivator is not regarded, as he would be by the law as administered in England, as a trespasser, but as a tenant; and he would be so, although he may never have expressly acknowledged the landlord's right or enter into any express contract with him for the payment of rent. If he chooses to cultivate the zemindar's lands and the zemindar lets him, there is an implied contract between them creating a relationship of landlord and tenant." The law of trespass has considerably developed during the last twenty years, and it is doubtful whether in the above case a simple suit for rent or an application for ascertainment of the conditions of the tenancy would *now* succeed. The safe course, no doubt, will be to sue for ejectment or rent in the alternative under the provisions of section 157 of this Act.

C—*Operation of Law.*—When a purchaser at a sale for arrears of Government revenue annuls an intermediate tenure, the relation of landlord and tenant is created, by operation of law, between him and the tenants of the intermediate tenure-holder. So also, when a landlord sues for rent, in the alternative of ejectment of a trespasser, under section 157 of this Act and obtains a decree for rent. When a proprietor succeeds in a suit for resumption of lakhiraj *created after the 1st December, 1790*, the relation of landlord and tenant is created between him and the holder of the invalid lakhiraj. (*Hara Prasad Choudhuri* v. *Shama Prasad Ray Choudhuri*, 6 W. R. X. 107 ; *Srimati Soudamini Debi* v. *Sarup Chandra Ray*, 8 Beng. App. 82, and the cases in foot-note ; S. C. 17 W. R. 363, 12 W. R. 442, 15 W. R. 345, 440, 474.)

Territories under the Administration of the Lieutenant-Governor of Bengal.—The following districts are within the Administration of the Lieutenant-Governor of Bengal :—

1. Burdwan Division :—Burdwan, Bankura, Birbhum, Midnapore, Hooghly, Howrah.

2. Presidency Division :—Twenty-four-Perganás, Khulna, Nuddea, Jessore, Moorshedabad.

3. Rajshahye Division :—Rajshahye, Dinagepore, Rungpore, Bogra, Pubna, *Darjeeling*, *Julpaigori*.

4. Dacca Division :—Dacca, Furreedpore, Backerganj, Mymensing.

5. Chittagong Division :—Tipperah, Noakhally, Chittagong, *Chittagong Hill Tracts*.

6. Patna Division :—Patna, Gya, Shahabad, Durbhanga, Mozuffarpore, Sarun, Chumparun.

7. Bhagulpore Division :—Bhagulpore, Monghyr, Purnea, Malda, *Sonthal Perganás*.

8. *Orissa Division :—Cuttack, Balasore, Puri, Tributary Mahals.*

9. *Chutia Nagpore Division :—Hazaribagh, Lohardugga, Manbhoom, Singbhoom.*

In these territories, except the districts in Italics, land is, as a rule, under Permanent Settlement; and Act VIII of 1869 was in force, and this Act extends by its own operation. For the land settlement and the law in force in the districts in Italics, *see* note under section 1, sub-section (3).

CHAPTER I.

PRELIMINARY.

Short title.

1. (1) This Act may be called the Bengal Tenancy Act, 1885.

Commencement.

(2) It shall come into force on such date (hereinafter called the commencement of this Act) as the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, appoint in this behalf.

This Act came into force on the 1st November, 1885. *See* Notification in the *Calcutta Gazette* of 9th September, 1885, page 874. By Act XX of 1885, however, the operation of those portions of the Act which relate to deposit of rent (secs. 61 to 64) and to distraint (Chap. XII) was postponed to the 1st February, 1886.

Local extent.

(3) It shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal,

except the Town of Calcutta, the Division of Orissa, and the Scheduled Districts specified in the third Part of the First Schedule of the Scheduled Districts Act XIV of 1874; and the Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, extend the whole or any portion of this Act to the Division of Orissa or any part thereof.

Calcutta.—Statutes 21 Geo. III, Cap. 70, S. 17 and 37 Geo. III, Cap. 142, S. 12 provide that in Calcutta all matters of contract and dealing between party and party shall be determined when the parties are Mahomedans, by the laws and usages of the Mahomedans; when the parties are Gentoos, by the laws and usages of the Gentoos; or by the law which would have been applied in a native Court: and when one of the parties is a Mahomedan or Gentoo, by the law of the defendant. The effect of these provisions, taken with section 1 of the Indian Contract Act, is that when *not inconsistent with the Indian Contract Act*, the personal law of the defendant if a Hindu or a Mahomedan would govern the contract of tenancy entered into by him. (*Rasik Lal Maduk* v. *Lokenath Karmakar*, Ind. 5 Cal. 688.)

Orissa.—It should be remembered that the Division of Orissa of the present day (acquired from the Mahrattas in 1803), is quite different from the Orissa of the Permanent Settlement. The latter nearly coincided with the present district of Midnapore. In Orissa of the present day, land has been under temporary settlements; the last settlement was for thirty years which will expire in 1897: and Act X of 1859 and its amending Acts have been and continue to be in force. For land settlements, *see* Reg. XII of 1805, III of 1815, VI of 1816, XIII of 1818, VII of 1832 and Acts VI of 1837, and VI of 1867. It may be noted that permanent settlement was promised by the earliest of these Regulations (sec. 4, cl. 6); and that the pledge continues to be binding.

Scheduled Districts.—These in Bengal are—

1. The Jalpaigori and Darjeeling Divisions.
2. The Hill Tracts of Chittagong.
3. The Sonthal Perganás.
4. The Chutia Nagpore Division.
5. The Mahal of Angul.

1. In Darjeeling and in that portion of Jalpaigori (*i.e.*, Thanas Fakirganj, Boda, Patgram and Sanyasikata) which was, till 1869, part of the Rungpore District, Act X of 1859 and its amending Acts are and continue to be in force. Land in this portion of Jalpaigori is permanently settled with the zemindars. A small area

in Darjeeling is permanently settled, the remainder being freehold tenures, grants, lands held khas by Government, or lands leased out temporarily.

In the other portion of Jalpaigori (Bhutan Dwars, acquired in 1865), ordinary Civil Courts were excluded from taking cognizance of rent and other suits by Act XVI of 1869; and the special officer appointed thereunder is empowered, by rules in the Schedule, to make a record of rights. Land is here under Government khas management, temporary settlements being made with the cultivators of the soil.

2. In the Chittagong Hill Tracts, the tribunals established under the general Regulations and Acts were excluded from taking cognizance of rent and other suits by Act XXII of 1860. Land is not permanently settled, and there appears to be no statutory tenancy law in force.

3. In the Sonthal Perganás, the Tenancy Law is the India Council Regulation III of 1872 and the Bengal Regulations VIII of 1793 and V and XVIII of 1812. The perganás may be divided into two portions: (1) the plain, and (2) the hill. The former is all settled under the old Permanent Settlement. The latter known as Daman-i-Koh was withdrawn, as early as 1780, from the general settlement and was made a separate "Government estate," which it still continues to be.

4. The Chutia Nagpore Tenures Act II B. C. of 1869 is in force in that Division; and so is the Chutia Nagpore Landlord and Tenant Procedure Act I B. C. of 1879, except in the District of Manbhoom where Act X of 1859 and its amending Acts continue to be in force. In Manbhoom, land is for the most part permanently settled. In Singbhoom, one portion (Dhalbhum) is a permanently settled estate, a second portion (Kolhun) is a Government estate temporarily settled with the raiyats, and a third portion is managed as estates under political control only. In Hazaribagh, lands are some permanently settled, and others temporarily. In Lohardugga, Palamow is a Government estate or khas mahal temporarily settled; and the rest of the district is settled with the Maharaja of Chutia Nagpore as a sort of permanently settled estate.

5. The Mahal of Angul was confiscated in 1847. The land is under direct Government management, and collections are made by a tehsildar. There does not seem to be any statutory tenancy law in force.

The Mahal of Banki was a Scheduled District, but is no longer so. It has been withdrawn from the Scheduled Districts by Act XXV of 1881 and annexed to the District of Cuttack. By section 2 of the above Act, Act X of 1859 and its amending Acts have been extended to the Mahal.

The Local Government may extend.—This clause empowers the Local Government to extend this Act wholly or partly to the Division of Orissa or to any part thereof. But it is silent about the Scheduled Districts, because the Local

Government already possesses the power to extend any Act to the Scheduled Districts under section 3 of the Scheduled Districts Act XIV of 1874.

The Local Government has not yet extended this Act to any part of Orissa or to any of the Scheduled Districts.

Repeal.

2. (1) The enactments specified in Schedule 1 hereto annexed are repealed in the territories to which this Act extends by its own operation.

It is to be noted that Act VIII B. C. of 1879 is wholly repealed by this Act. That enactment related to the powers of Settlement Officers to record and enhance the rent of tenants. Their powers to do so are now governed by Chapter X of this Act.

Another important repeal is that of sections 52 and 53 of Reg. VIII of 1793, which provided :

"52. The zemindar or other actual proprietor of land is *to let* the remaining lands of the zemindari or estate under the prescribed restrictions, in whatever manner he may think proper : but every engagement contracted with under-farmers shall be specific as to the amount and conditions of it ; and all sums received by any actual proprietor of land or any farmer of land of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted and be repaid with a penalty of double the amount. The *restrictions* prescribed and referred to in this section are the following :—

"53. No person, contracting with a zemindar, independent talukdar or other actual proprietor or employed by him in the management of the collections, shall be authorized to take charge of the lands or collections without an amilnama, or written commission, signed by such zemindar, independent talukdar or other actual proprietor."

It will be remembered that the landlord's right, to demand any rent he pleased from the in-coming raiyat, was deduced by one member of the Rent Commission from section 52. He explained the words "*to let*" to include agricultural leases, and referred to sections 53 to 64 for the *restrictions* alluded to. Two other members contended that "*to let*" referred only to farming leases and the *restrictions* were contained in section 53 only. To this, it was replied that section 53 contained only one restriction, and therefore *restrictions* must be sought for in other sections besides it. It does not appear that this last argument has yet been satisfactorily met. If the reader will, however, refer to the original rules of the 23rd November, 1791 (Colebrooke's Digest, Supp. 319), he will find that section 53 originally contained another restriction which was "and that copies of such commissions be deposited in the Collector's Sudder Cutchery." This restriction seems to have been subse-

quently expunged, but, by inadvertence, the word *restrictions* in the preceding section was left in the plural. (a)

In this connection it may be added that sections 43, 44, *et seq.* of those rules (*Ibid*, 317), would clearly show that in the phrase "equalizing and correcting the assessment" in section 60 of Reg. VIII of 1793, the word *assessment* has reference to Government revenue, and *not* to rent paid by raiyats.

(2) When this Act is extended to the Division of Orissa or any part thereof, such of those enactments as are in force in that Division or part, or, where a portion only of this Act is so extended, so much of them as is inconsistent with that portion, shall be repealed in that Division or part.

(3) Any enactment or document referring to any enactment hereby repealed shall be construed to refer to this Act or to the corresponding portion thereof.

Document.—This word has not been defined in this Act. Nor was it in the General Clauses' Act I of 1868. The definition in the Evidence Act I of 1872 and the Penal Code XLV of 1860 is "any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means intended to be used, or which may be used, for the purpose of recording that matter or as evidence of that matter." This definition is wide enough to include notifications, rules or orders made by the Government or the High Court under the repealed Acts, as well as private documents.

(4) The repeal of any enactment by this Act shall not revive any right, privilege, matter or thing not in force or existing at the commencement of this Act.

This clause as in the Commission Bill stood thus :—"* * * shall not revive any enactment, right, privilege * * *." The word *enactment* has been omitted as superfluous, for section 3 of the General Clauses' Act I of 1868 provides that for the purpose of reviving either wholly or partially a Statute, Act or Regulation repealed, it shall be necessary expressly to state such purpose.

(a) This inadvertence need not surprize any body; for it will be seen that the dates of the original rules for Decennial Settlement for Bengal, Behar and Orissa are wrongly put in the Regs. I and VIII of 1793, as 18th September, 1789, 25th November, 1789, and 10th February, 1790, "respectively," when they should be 10th February, 1790, 18th September, 1789, and 25th November, 1789, respectively

There was another sub-section in the Commission and the Bengal Bills :—

"This repeal shall not effect

"*(a)* the past operation of any enactment hereby repealed, nor anything duly done or suffered thereunder ; nor

"*(b)* any right, privilege, obligation or liability incurred under any enactment hereby repealed ; nor

"*(c)* any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability as aforesaid ; and any such investigation, legal proceeding and remedy may be carried on as if this Act had not passed."

Clauses *(a)* and *(b)*, as they stand, could have no place in this Act. For it has a retro-active effect in certain matters : (*e. g.*, see section 178.) In those matters it affects things done or suffered under the repealed Acts and rights, privileges, obligations and liabilities incurred thereunder. In other matters, the general rule for the interpretation of statutes,—that a retro-active effect should not, in the absence of express language or necessary implication, be given to a statute as to affect existing rights—and section 6 of the General Clauses' Act—that the repeal of any Statute, Act or Regulation shall not affect any proceedings commenced before the repealing Act came into operation—go a long way to remedy the omission. The word *proceedings* in section 6 of the General Clauses' Act has been judicially interpreted to include (1) suits in which decrees have been passed (*Ratan Chand Shri Chand* v. *Hanmanbrav Shivbakas*, 6 Bomb. 166) ; (2) appeals even if filed after, in suits commenced before, the repealing Act came into operation (*Ranjit Sing* v. *Meherban Koer*, Ind. 3 Cal. 662) ; (3) proceedings in execution (In *Ratansi Katianji*, Ind. 2 Bomb. 148) ; and (4) appeals even if filed after, against orders in execution cases commenced before, the commencement of the repealing Act (*Thakur Prosad* v. *Ahsan Ali*, Ind. 1 All. 668). Thus the rights of parties, in suits, appeals, and execution cases commenced before the 1st of November, 1885, and in appeals commenced after that date but relating to suits or execution cases commenced before, are not affected by this Act. The rights of parties in execution cases, commenced after the 1st of November, 1885, but relating to decrees passed before, would also appear not to be affected.

Proceedings, however, are different from *procedure*. Procedure is the "machinery by which proceedings are conducted" or "the rules of practice whereby rights are effectuated through the successful application of proper remedies." And the general rule, that statutes should not be construed retrospectively, does not apply to statutes regulating procedure ; and the presumption is that, *primâ facie*, such statutes have a retrospective effect. The absence, therefore, of a section like section 108 of Act VIII B. C. of 1869—which expressly saved, for pending suits, appeals and

execution cases, the practice and procedure of the repealed Act—tends to show that the procedure in pending suits, appeals and execution cases will be that of the new Act.

3. In this Act, unless there is something repugnant in the subject or context:—

Definitions.

In construing the definitions, the following two rules should be always kept in view: that, unless there is something repugnant in the subject or context, (1) words in the singular include the plural and *vice versâ;* and (2) person includes any company or associations or body of individuals, whether incorporated or not. (Sec. 2, General Clauses' Act I of 1868.)

(1) "Estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for the time being in force by the Collector of a district, and includes Government khas mahals and revenue-free lands not entered in any register.

"Estate" means land, &c.—As defined in this Act, estate is simply *land*, and *not* the *interest* of any person in such land. In this respect the definition here agrees with the definitions of the term in the Bengal Acts VII of 1868, IV of 1870, VI of 1873, VII of 1876, VIII of 1876, and IX of 1880.

General registers, &c., maintained under the Law.—The law now in force regarding these registers is Act VII B.C of 1876, which in section 4 provides that the Collector of every district shall prepare and keep up four registers, of which two are general—

A. General Register of revenue-paying lands, and

B. General Register of revenue-free lands.

The Act further empowers the Board of Revenue to direct that any land, which is the property of Government, be separately entered in the General Register (sec. 3, cl. 1, art. c.). And the Board have directed that Government *khas mahals* and *ryotwari* tracts be separately shown in the General Register. According to the Board's Revenue Report for 1884-85 there are 1,45,457 permanently settled estates, 7,691 temporarily settled estates, 2,913 Government estates, and 26 ryotwari tracts; or a total of 1,56,087 estates in the Lower Provinces.

Includes Government khas mahals and revenue-free lands not entered in any register.—The express inclusion of the former, though not essential, so long the Board's rules stand as at present, was considered necessary to clear a misapprehension, that the Government intended to exclude its own

estates from the operation of this Act. It makes further such operation independent of any future alteration of the Board's rules.

The inclusion of unregistered revenue-free lands remedies a real omission in the first Bill. Instances are numerous in which land is held free of all charge, where the land could not be brought under the category of an *estate*, as the holder had not been registered under the provisions of Act VII B. C. of 1876, nor under that of a *tenure*, as the holder could not be shown to have acquired the right to collect rent from a proprietor of an estate or from another tenure-holder. The origin of these *lakhirajes* cannot be traced ; and all that can be shown is, that the holder has paid neither revenue nor rent for a long number of years. These lands are now expressly included within the term "estate" under this Act.

The only advantage which the Government retains over private zemindars under this Act, is the certificate procedure of Act VII B. C. of 1868. (*See* note under sec. 195.)

(2) "Proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate.

Proprietor thus includes (1) the owners of registered revenue-paying estates ; (2) the owners of registered revenue-free estates ; (3) the owners of unregistered revenue-free lands ; (4) Government as owner, *for its own benefit*, of the *khas mahals ;* and (5) Government as owner *in trust* of estates owned by wards under its care.

It is to be noted that a person is a proprietor irrespective of his name having been registered as owner under Act VII B. C. of 1876.

The word *part* in the definition includes both shares and specific portions.

Owning.—The word "owning" is not used in the juridical sense of "having the right to use and deal with the land, in a manner and to an extent which, though not unlimited, is indefinite," or "having to the exclusion of every body else all such rights over the land as are available against the world at large" ; but it is used in the sense which it has in the Permanent Settlement-literature, namely, of "having that bundle of rights which the State in 1793 transferred from itself to the zemindar."

Talukdars, who used to pay the revenue assessed upon their lands through zemindars and whose title-deeds contained a clause stipulating that their revenue was to be paid through the zemindars, continued, under the Permanent Settlement Regulations, to pay their revenue through such zemindars. (Sec. 6, Reg. VIII of 1793.) Talukdars, who under section 5, Reg. VIII of 1793, were entitled to be separated from zemindaris to which their taluks were attached and to pay their revenue direct to Government, but who, not applying to be so separated within one

year from the date of Reg. I of 1801, forfeited their rights to be separated, also continued to pay their revenue through the zemindars, but in other respects the rights of these talukdars were not in any degree affected: (sec. 14, Reg. I. of 1801.)

These two classes of dependent talukdars are, in regard to the portions of estates included in their taluks, "proprietors" under the definition of this Act; and the zemindars, in reference to them, only collectors of revenue from them for the State. Other classes of dependent talukdars (secs. 7, 8 and 9 of Reg. VIII of 1793) fall under the denomination of tenure-holders under this Act (sec. 5); for they, unlike the above two classes, acquired their rights from the zemindars.

In trust.—Proprietor thus includes *Matwalis* of Mahomedan endowments; *Shebaits* of Hindu endowments, mortgagees and managers.

(3) "Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person.

Tenant thus includes all rent-payers; and ranges from dependent talukdars (except as above) down to under-raiyats. (a) But payment of rent is not essential. It is sufficient that the person would have been liable to pay rent, but for a special contract. A person, therefore, who holds land on condition of paying or delivering something which is not rent under this Act, or on condition of rendering some service, manual or otherwise, is a tenant. So also is a person, who, under a special contract, holds land rent-free, or free of all liabilities of making any payment or delivery or rendering any service.

"Special" is used in opposition to the *general* contracts under which rent in money or produce is reserved.

Land.—The term *land* has not been defined in this Act; nor was it in the repealed Acts. An amendment was proposed in Council, to add a definition of land limiting it to cultural land. But it was rejected, as it went much further than the existing law justified; and the question, what land is in reference to the several provisions of this Act, has been left to be decided by the Courts.

The Rent Commission remarked "certain portions of Act X of 1859 and Act VIII of 1869 have been construed to apply only to land used for agricultural or horticultural purposes, or the like. Whether the remaining portions are

(a) In Backerganj may be found the following gradation of tenants:—(1) talukdar, (2) zimba talukdar, (3) shamilat talukdar, (4) oshat talukdar, (5) nim oshat talukdar, (6) howladar, (7) oshat howladar, (8) nim oshat howladar, (9) nim howladar, (10) oshat nim howladar, (11) zimbadar, (12) mirash karshadar, (13) kaim karshadar, and (14) karshadar

so limited in their application is a broad question, which has never been settled. * * * It has, however, never been doubted that the rents of tenures and under-tenures are recoverable under these Acts; and these commonly *include much more than land for agricultural or horticultural purposes.*"

In the definition of "estate," *ante*, it is clear that land includes woods and water thereupon. Has the term an equally wide signification in the definition of tenant? or, has it a narrower meaning? It will be seen that section 193 of this Act provides that "the provisions of this Act, applicable to suits for the recovery of arrears of rent, shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries, and the like." Under the rule, therefore, that the different parts of a statute should be so construed as, if possible, not to make any part superfluous or redundant, persons, having the rights of pasturage, forest-rights, rights over fisheries, and the like, must be construed as not included among *tenants*. Land, in this definition must, thus, be understood as not to include pastures, forests, fisheries and the like, when such pastures, forests, fisheries and the like, stand exclusively and by themselves. But when they do not stand by themselves but form only a subordinate part of one whole, the remainder of which is land held for the purpose of collecting rent or of bringing it under cultivation or of cultivating it, they are included within the term *land* in the definition. As regards pastures, a raiyat, who acquired land for cultivation but uses it for pasture is, under section 5, to be deemed to hold it for cultivation.

It was held under the repealed Acts X of 1859 and VIII B. C. of 1869 that *land*, the subject of a suit for arrears of rent, *i.e.*, the subject of a tenancy under those Acts, included (1) land upon which a house stood, if the house-rent and the ground-rent could be separated (*Ramcharan Sing* v. *Miadhan Darji*, 8. W. R. 90); (2) land upon which an indigo factory stood, if the rent issued out and was reserved in respect of the land alone (*Tarinipraśad Ghosh* v. *Bengal Indigo Company*, 2 W. R. X. 9); (3) hát (*Gaitri Devi* v. *Thakur Das*, W. R. Sp. 78); (4) land and pucka buildings standing thereon, if land was the principal subject on which rent was reserved (*Mathuranath Kundu* v. *Moncrieff*, 9 Beng. 115, note); and (5) land on which the tenant had the right to levy a tax, when rent issued out of the land and was paid on account and for the use of the land (*Watson* v. *Gobind Majumdar*, W. R. Sp. X. 46): but that *land* did *not* include (*a*) factories (*Aditya Pal* v. *Kamala Kant Pal*, Marsh. 401); (*b*) houses with grounds attached (*Bipra Das De* v. *Woollen*, 1, W. R. 223); (*c*) land with a house or buildings thereon, when rent included the rent of buildings (*Sheik Nasar Ali* v. *Sadat Ali*, W. R. Sp. 102; *Maharaja Mahatap Chand* v. *Mukundballav Bose*, 9 Beng. App. 13); (*d*) land where the rent came from arhats, bazars, &c., thereon (*Hari Mohan Sarkar* v.

Moncrieff, Ibid. 14); (*e*) mines and lands accessory to the enjoyment of the mines (*Khellut Chunder Ghose* v. *Minto*, 1 Ind. Jur. N. S. 426); and (*f*) stone quarries and accessory land (*Shaligram Sing* v. *Mussamut Kabiran*, 3 Beng. A. C. 61).

(4) "Landlord" means a person immediately under whom a tenant holds, and includes the Government.

Landlord thus ranges from proprietors to under-raiyats who sublet; and being the correlative of tenant, there must be an equal number of grades of landlords as there are of tenants. And just as the payment of rent is not essential for being a tenant, so the receipt of rent is not, for being a landlord. It is sufficient if he could get rent, except for a special contract. A proprietor, talukdar, raiyat or under-raiyat, who does not let his land but cultivates or occupies it, is not a landlord. "*Includes the Government*" must be understood to mean "includes the Government when it is a proprietor," and not Government as the receiver of the revenue. "*Person*" includes any company or association or body of individuals, corporate or not. "*Immediately under whom*" excludes the landlord of the landlord, or, as he is called, the superior landlord.

(5) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant.

This definition is substantially what was recommended by the Rent Commission. To comprehend its full force, the theory of rent, applicable to this country, must be clearly kept in view. The Rent Commission said: "The appropriate theory of rent, applicable to this country, is, not that it is the surplus profit of capital applied to agriculture, or that it depends immediately upon, or is regulated by, the profits of capital, but that it is such a proportion of the produce of the soil deliverable in kind or payable in money as, the Government may from time to time determine, shall be delivered or paid by the cultivators to the zemindars, or those to whom the zemindars have transferred their rights."

Under the English law, where the theory of rent is quite different, rent "is defined by Chief Baron Gilbert in his *Treatise on Rents*, p. 9, 'an annual return made by the tenant, either in labour, money or provisions in retribution for the land that passes,' from which you will observe that, though rent is usually reserved in money, it need not be so; or even in those other things mentioned by Gilbert, but which are only given as examples. It may, as is said by Lord Coke (1 Inst. 142, *a*), consist of spurs, horses, or other things of that nature, or of services or manual labour; as, to plough a certain number of acres for the landlord yearly." (Woodfall, 111.)

The definition in this Act, it will be noted, excludes all others except rent in money and rent in kind; and if anything else is reserved for the use and occupation of land, it can be recovered only as damages. The words "*to the landlord*" in the definition would also shew that, if return is reserved to any other person except the landlord (*e. g.*, to the superior landlord), this return is not *rent*, and therefore is recoverable only as damages. (*Ratanessar Biswas* v. *Haris Chunder Bose*, Ind. 11 Cal. 221.)

Lawfully payable.—Abwabs have always been and are illegal: (sec. 74, *post*, and note thereunder.) Interest on arrears of rent at a rate more than 12 per cent. from the expiration of each quarter of the year, if not reserved in a contract made before the 14th of March, 1885, is not lawfully payable: (secs. 67 and 178, (3), *h*.)

The distinction, pointed out by some annotators, between *lawfully payable* and *lawfully recoverable*, is important in connection with section 75 which provides for penalty for exaction in excess of rent lawfully *payable*. In the following cases rent, though *not* lawfully recoverable, is lawfully payable:—

1. Every proprietor of a registered revenue-paying and revenue-free estate, required by the Land Registration Act to cause his name to be registered, is precluded from recovering

(*a*) rent from tenants in the estate, unless his name has been registered under that Act;

(*b*) rent from such tenants for any share in excess of that for which his name has been registered. (Act VII B. C. of 1876, sec. 78.)

The disability ceases when the registration of his name and share has been effected.

2. Every holder of an estate or tenure, in respect of which notice to lodge a return of all lands comprised therein has been served under Chapter II of the Cess Act, is precluded from suing for, and recovering rent of, any land in respect of which no return has been lodged. (Act IX B. C. of 1880, sec. 19.)

This disability ceases when the required return is lodged, or the valuation of the estate or tenure is otherwise completed.

3. Every holder of an estate or tenure, in respect of which a return has been made under Chapter II of the Cess Act, shall be precluded from suing for, and recovering,

(*a*) any rent which has not been mentioned in such return, unless the tenancy of which the rent is claimed was created subsequently to the lodging of such return;

(b) rent at any higher rate than is mentioned in such return, unless the rent has been legally enhanced subsequently to the lodging of the return. (Act IX B. C. of 1880, sec. 20.)

Omissions and mistakes in the return may be corrected within six months. But if the landlord fails to correct within such time, the disability continues till the time of the next re-valuation; and the landlord is precluded from recovering during the interval.

4. A person succeeding to a permanent tenure is precluded from recovering rent payable to him as the holder of the tenure, if he has not given the Collector notice of such succession and paid him the landlord's fee : (sec. 16, *post.*)

This disability ceases when notice is given and the fee is paid to the Collector.

5. The landlord of an under-raiyat holding at a money-rent is not entitled to recover rent exceeding what he himself pays by more than 50 per cent., if there is a registered lease or agreement; or by more than 25 per cent., if there is none : (sec. 48, *post.*)

This disability never ceases.

In sections 53 to 68, both inclusive, sections 72 to 75, both inclusive, Chapter XII and Schedule III of this Act, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent.

Sections 53 to 55 treat of instalments of rent, time and place for payment of rent and appropriation of payments; sections 56 to 60, of receipts and accounts, penalties for withholding them and the effect of receipt by registered proprietor; sections 61 to 64, of deposit of rent : and sections 65 to 68, of interest on arrears of rent, damages on arrears, and the liability to sale or ejectment for arrears. Sections 72 and 73 treat of the liability for rent to a transferree-landlord; section 74, of illegal cesses; and section 75, of penalty for exaction of sum in excess of rent payable. Chapter XII treats of distraints; and Schedule III, of limitation applicable to suits, &c., under this Act.

Recoverable under any enactment as rent.—These words include Road and Public Work cesses payable under Act IX B. C. of 1880 (*see* sec. 47), and sums payable under the Bengal Embankment Act II B. C. of 1882 (*see* sec. 74), and under the Bengal Survey Act V B. C. of 1875 (*see* sec. 38).

(6) "Pay," "payable" and "payment," used with reference to rent, include "deliver," "deliverable" and "delivery."

(7) "Tenure" means the interest of a tenure-holder or an under-tenure-holder.

See notes under section 5.

(8) "Permanent tenure" means a tenure which is heritable and which is not held for a limited time.

See notes under section 5.

(9) "Holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy.

See notes under section 5.

Subject of a separate tenancy.—When additions are made in a raiyat's holding from time to time, the total is always understood to be one holding. Under this definition the holding will remain one, unless the parties contract that any new plot is to be considered a separate tenancy.

(10) "Village" means an area included in a village map of the revenue-survey within the same exterior boundary, or, where no such maps have been prepared, such area as any officer appointed by the Local Government in this behalf may determine after local inquiry held on such notice as the Local Government considers sufficient for giving information to all persons interested.

(11) "Agricultural year" means, where the Bengalí year prevails, the year commencing on the first day of Bysák, where the Faslí or Amlí year prevails, the year commencing on the first day of Asin, and, where any other year prevails for agricultural purposes, that year.

This is an important definition. Ejectment takes place from the end of the agricultural year (sec. 46); arrears of rent fall due on, and interest run thereon, from the last day of each quarter of such year (secs. 53 and 67); tenants are entitled to receive discharge or account at its end (sec. 57); surrender and abandonment commence at its end (secs. 86 and 87); enhanced rent and rent settled under Chapter X, also commence at its end (secs. 110, and 154.)

The definition of the term, however, is not free from ambiguity. It would appear that the words "*for agricultural purposes*" should be understood with "where the Bengalí year prevails," and "where the Faslí year prevails," as well as with "where

any other year prevails." If it be not so connected, we get two years for the same perganá, *e.g.*, where Faslí year prevails generally and an agricultural year, commencing with Asár, prevails for agricultural purposes. For the last clause is connected with the preceding two by "*and*" and not by "*but*"; and "where" does not mean "in other places where." And an interpretation which makes a definition partly redundant, and partly inconsistent, should not be accepted when one is possible which leads to no redundancy or inconsistency.

In Behar, the agricultural year commences with Asár and ends with Jyet. It is, therefore, that the limitation for suits, for arrears for rent, has been made to commence with the end of Jyet (Schedule III, art. 2); and in cases of ejectment for arrears, arrears are taken into account only when due at the end of Jyet (sec. 66).

In Bengal, though agricultural operations generally begin in Magh, no agricultural year was before this recognized in legislation. And the effect of sections 14, 22 and 29 of Act VIII B. C. of 1869 and sections 21 and 32 of Act X of 1859 which recognized the Behar agricultural year, but not the Bengal agricultural year, has been that, though land is let to raiyats generally in Pous, it can hardly be broadly stated that any agricultural year is prevalent.

The Bengalí year prevails in Bengal, the Faslí year in Behár, and the Amlí or Vilayatí year in Orissa and parts of Midnapore The Bengalí year is solar, and commences with the 1st of Bysák corresponding with the 12th or 13th of April of the British Calendar.

The Faslí is a lunar year, commencing with the 1st of Assin; the corresponding date in the British Calendar being generally somewhere in September. To bring the commencement of the year to the same season, an intercalary month is inserted every third (sometimes second) year. Without this month the year is of 354 days, and with it, of 383 or 384 days.

The Vilayatí year is solar, and one day in advance of the Bengalí year. It commences, however, on variable dates in Bhadra and Assin.

The following dates are important as occurring in different sections of this Act, when some rights begin or cease :—

1. The 1st of November, 1885, (the date of the commencement of this Act,) corresponds to the 17th of Kartick, 1292, Bengalí year, the 9th of Kartick, 1293, Faslí year, and the 18th of Kartick, 1293, Vilayatí year.

2. The 14th of March, 1885, (the date of the passing of this Act,) corresponds to the 2nd of Chyet, 1291, Bengalí, the 13th of Chyet, 1292, Faslí, and the 3rd of Chyet, 1292, Vilayatí year.

3. The 2nd of March, 1883, (the date of the leave for the introduction of the Bengal Tenancy Bill in Council,) corresponds to the 19th of Falgun, 1289, Bengalí, the 9th of Falgun, 1290, Faslí, and the 20th of Falgun, 1290, Vilayatí year.

4. The 15th of July, 1880, (the date of the publication of the Rent Commission's Report,) corresponds to the 1st of Sraban, 1287, Bengalí, and the 23rd of Assár, 1287, Faslí, and the 2nd of Sraban, 1287, Vilayatí year.

Where the term year is used in this Act by itself, the year of the British Calendar must be understood : (Act I of 1868, sec. 2, clause 3.)

(12) "Permanent Settlement" means the Permanent Settlement of Bengal, Behar and Orissa, made in the year 1793.

This excludes the Permanent Settlement of any district or area at any subsequent time.

(13) "Succession" includes both intestate and testamentary succession.

(14) "Signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to.

(15) "Prescribed" means prescribed from time to time by the Local Government by notification in the official Gazette.

(16) "Collector" means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act.

(17) "Revenue-officer" in any provision of this Act includes any officer whom the Local Government may appoint by name or by virtue of his office to discharge any of the functions of a Revenue-officer under that provision.

(18) "Registered" means registered under any Act for the time being in force for the registration of documents.

The Act in force for the registration of documents is Act III of 1877. It provides in section 17 (*d*), that leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, shall be registered : provided that the Local Government may, by order published in the official Gazette,

exempt any leases executed in any district or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees. Orders made under the previous Registration Acts, are to be deemed to have been made under this Act: (sec. 2.) The Local Government of Bengal exempted leases in the district of Gyá and Sháhábád, if for a term for two years only, from compulsory registration, under the Act of 1866.

"*Leases, for any term exceeding one year,*" in this clause, have been held to include, (1) kabulyats for one year with a provision extending their time (*Krista Kali Munshi* v. *Agemona Bewa*, 15 W. R. 170); (2) pottahs for one year containing a provision that they are to remain in force till another pottah is granted (*Venacata Chellum Chetti* v. *Audian*, Ind. 3 Mad. 358); but *not* kabulyats for one year certain, containing an expression on the tenant's part of his readiness to hold the land longer, if the landlord should desire it (*Apu Budgavda* v. *Narhari Annajee*, Ind. 3 Bomb. 21).

Lease.—A lease has been described to include "a counterpart, kabulyat, an undertaking to cultivate or occupy, and an agreement to lease:" (section 3 of the Registration Act.) *An undertaking to cultivate or occupy* has been held to mean an *accepted* undertaking giving to the lessee a right or interest in the thing let (*Apu Budgavda* v. *Narhari Annajee*, Ind. 3 Bomb. 21). *A lease or agreement to lease* has been held *not* to include (1) an *amal dastak*, which gives possession, pending the execution of a formal lease (*Banwari Lal* v. *Sungum Lal*, 7 W. R. 280); (2) a *doul firist*, which is only a record of the zemindar's agent of rents settled with the raiyats, and to which various raiyats affix their signature in testimony of the correctness of the rents recited thereon (*Ganga Prasad* v. *Gagan Sing*, Ind. 3 Cal. 322); (3) a document providing for the payment of *salami* for a lease (*Kedarnath Mitra* v. *Surendra Dev Ray*, Ind. 9 Cal. 865); (4) an entry showing the extent of the holding, the amount of the rent payable, disbursement and balance, made in book of the lessor and signed by the lessee, at a date subsequent to the lessee's entering upon possession under a verbal agreement (*Rani Narain Kumari* v. *Ram Krishna Das*, Ind. 5 Cal. 864); (5) an instrument in the form of a lease but really creating an usufructuary mortgage (*Isan Chandra* v. *Sujan Bibi*, 7 Beng. 14); (6) a *doul darkhast*, or application for lease, when it amounts to nothing more than a proposal to lease (*Golak Kisore Acharjya Chaudhuri* v. *Nandamohan De Sarkar*, 12 W. R. 394, *Chuni Mandar* v. *Chandi Lal Das*, 14 W. R. 178, *Bibi Meharinessa* v. *Abdul Gani*, 17 W. R. 509; *Maharaja Lachmissar Sing* v. *Rung Lal*, Ind. 7 Cal. 708); (7) *a doul darkhast*, even if attested by witnessess (*Lal Jha* v. *Negroo*, Ind. 7 Cal. 717). But if the *doul darkhast* has the word "granted" upon it signed by the landlord, and that word is written in token of acceptance,

it is a complete lease and requires registration (*Syad Safdar Reza* v. *Amzed Ali*, Ind. 7 Cal. 703).

Section 18, clause 3 of Act III of 1877 provides that leases of immovable property for any term not exceeding one year, and leases exempted under section 17 may be registered ; and section 48, that documents duly registered shall take effect against oral agreements relating to the same property, unless accompanied or followed by delivery of possession. A verbal lease with possession, therefore, is not affected by a subsequent registered lease, whether the registration is optional or compulsory. Section 49 of the Act provides that no document, of which the registration is compulsory, shall be received in evidence of any transaction affecting such property, unless it has been duly registered. It has been held that the plea of the inadmissibility of a document for want of registration must be taken in the first court ; otherwise it cannot be urged in appeal : (*Currie* v. *Chatty*, 11 W. R. 520, *Giris Chandra Rai Chaudhuri* v. *Amina Khatun*, 3 Beng. App. 125.) Where a lease, of which the registration is compulsory, is not registered, and is therefore inadmissible in evidence, secondary evidence of its contents and terms cannot be given (section 91, Act I of 1872). But this does not preclude a landlord from proving the tenancy by other evidence, if available, *i. e.*, by facts from which the tenancy may be inferred. The following illustrations taken from Field's Digest will explain the point:—

(*a*) A, a tenure-holder, applies for the determination of the incidents of B's tenancy. B pleads that the relation of landlord and tenant does not exist between himself and A, who cannot, therefore, be entitled to make the application. A proves that B has for several years made him payments on account of rents, and on one occasion made no objection, when A distrained and had his crops sold for the recovery of a certain amount of rent alleged by A to be due for the land occupied by B. The Court may infer the existence of the relation of landlord and tenant between A and B.

(*b*) A sues B for the rent of seven bighas of land for the years 1281, 1282 and 1283, Bengal era, at the annual rent of Rs. 10. B admits that he holds the seven bighas of land, and that the annual rent is 10 rupees; but he alleges that no relation of landlord and tenant exists between A and him, and that his rent is payable to C. A, in the course of his examination as a witness, says that B executed a kabulyat in his favour some years before, but that he cannot tell what has become of it. No legally admissible secondary evidence of the contents of the kabulyat is offered ; but A shows by satisfactory evidence that B has been in the habit of paying him the rent of the seven bighas of land. The Court may find the relation of landlord and tenant proved.

(*c*) A sues for the rent of seven bighas of land for the years 1281, 1282 and 1283, Bengal era, at the annual rent of Rs. 10. B alleges that the annual rent is seven rupees only. A admits that B executed a kabulyat in his favour for ten years, from 1275. This kabulyat must be produced or legally admissible secondary evidence of its contents must be given, failing which, A can have a decree at the rate only admitted by B.

Section 50 of Act III of 1877 provides—"Every document of the kinds mentioned in clauses (*a*), (*b*), (*c*) and (*d*) of section 17, and clauses (*a*) and (*b*) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered documents or not.

"Nothing in the former part of this section applies to leases exempted under the proviso in section 17, or to the documents mentioned in clauses (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), (*k*) and (*l*) of the same section.

"*Explanation.*—In cases where Act No. XVI of 1864 or Act No. XX of 1866 was in force in the place and at the time in, and at, which such unregistered document was executed, 'unregistered' means not registered according to such Act, and where the document is executed after the 1st day of July 1871, not registered under under Act VIII of 1871, or this Act."

Under this section it has been ruled (1) that a registered document, falling under the clauses mentioned in the first part of the section, takes effect against an unregistered document, even though it be accompanied by possession, *i.e.*, possession *by itself*, is not sufficient to take away the priority of the registered document (*Narain Chakravarti* v. *Dataram Ray*, Ind. 8 Cal. 597, 10 Cal. 240, overruling *Dinonath Ghosh* v. *Alakmani Devi*, Ind. 7 Cal. 753, 10 Cal. 129); (2) that possession in a majority of cases is very cogent evidence of notice (*Nani Bibi* v. *Hafizulla*, Ind. 10 Cal. 1073); and (3) that a subsequent registered document does not take effect against a prior unregistered document, if the subsequent transferree had notice of the prior transaction (*Bhalu Ray* v. *Jukhu Ray*, Ind. 11 Cal. 667).

It will be noted that the clauses, mentioned in the first part of section 50, include "leases of immovable property from year to year or for any term exceeding a year, or reserving a yearly rent"; but not "leases for any term not exceeding one year, and leases exempted by the Local Government." The result thus appears to be that (1) a registered lease, of which the registration is compulsory, takes effect against a prior unregistered lease, of which the registration is optional, unless the subsequent lessee had notice of the prior lease; (2) a registered lease, of which the registration is compulsory, takes effect against a prior unregistered lease, of which the registration is optional even if accompanied by possession, unless such possession is such as to be sufficient notice to the subsequent lessee; (3) a registered lease, of which registration is compulsory, does not take effect against a prior unregistered lease which has been exempted from compulsory registration by the Local Government; and (4) a registered lease, of which the registration is optional, does not take effect against a prior unregistered lease of the same kind.

Additions made by the present Act.—To the provisions of Act III of 1877, the present Act makes the following additions regarding compulsory registration :—

(1) a transfer of a permanent tenure or a share of it (secs. 12 and 17) ;

(2) a transfer of a holding at fixed rate or of a share of it (sec. 18, cl. *a*) ;

(3) a contract enhancing the rent of an occupancy-raiyat (sec. 29, cl. *a*) ;

(4) a contract enhancing the rent of a non-occupancy-raiyat (sec. 43).

There are other provisions in the Act, which also would indirectly add to registration.

(5) An under-raiyat's lease, if registered, gives the advantage *(a)* to the raiyat that he may recover from the under-raiyat 50 per cent. more than his own rent, otherwise only 25 per cent. more (sec. 48) ; and (*b*) to the under-raiyat that it is valid against the landlord of the raiyat (sec. 85), and the latter is, in case of abandonment by the raiyat, bound to offer the under-raiyat the option of taking the whole holding on the same terms for the remainder of his sub-lease (sec. 87), and in case of surrender by the raiyat, such surrender shall not be valid, unless made with the under-raiyat's consent (sec. 87). As the registered sub-lease of the under-raiyat thus affects the rights of the raiyat's landlord, who is no party to the transaction, it has been enacted that such a lease shall not be admitted to registration, if it purports to exceed the legal term of nine years (sec. 85, cl. 2). For, though registration of a sub-lease which is for more than nine years could not make it valid for any term beyond nine years, it would, all the same, bind the landlord of the raiyat for those nine years ; but its non-registration leaves such landlord free from the obligations which would by registration attach to him.

(6) An incumbrance, if created by a registered document and notified to the landlord, gives the advantage to its holder that if the superior tenure or holding is brought to sale for arrears of rent, it shall first be sold subject to such incumbrance, and only when such a sale does not fetch price enough to liquidate the decretal debt, it shall be sold with power to annul the incumbrances (secs. 164 and 165).

Incumbrances, created before the commencement of this Act, of which the registration is not compulsory under section 17 of the Registration Act, shall be accepted for registration within one year from the commencement of the Act (sec. 175) ; and the officer, registering the incumbrance, shall, at the request of the tenant or holder, notify it to the landlord (sec. 176).

CHAPTER II.

CLASSES OF TENANTS.

THIS Chapter describes the different classes of tenants with which the Act deals. Tenants are first divided into three main classes: tenure-holders, raiyats, and under-raiyats. All tenure-holders are of the same class, though there may be any number of grades among them; *e. g.*, patnidár, darpatnidár, sepatnidár, cháhár-patnidár, &c.; or, taluk, zimba-taluk, shamilat-taluk, oshat-taluk, nim-oshat-taluk, &c. Raiyats, however, are of three classes: raiyats at fixed rates, occupancy-raiyats, and non-occupancy-raiyats. But they are all of the same grade; in other words, no raiyat may hold under another raiyat; either the former must be called an under-raiyat or the latter must be a tenure-holder or a proprietor. Under-raiyats, again, are all of the same class, though there may be different grades among them. There are thus altogether five classes of tenants: (1) tenure-holders; (2) raiyats at fixed rates; (3) occupancy-raiyats; (4) non-occupancy-raiyats; and (5) under-raiyats. The incidents of the different grades of tenancies within the same class are the same; but the incidents of the five classes of tenants differ from one another and have been dealt with in the following five Chapters.

Classes of tenants.

4. There shall be, for the purposes of this Act, the following classes of tenants (namely):—

(1) tenure-holders, including under-tenure-holders,

(2) raiyats, and

(3) under-raiyats, that is to say, tenants holding whether immediately or mediately under raiyats;

and the following classes of raiyats (namely):—

(a) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,

(b) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(c) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy.

Including under-tenure-holders.—Wherever, in this Act, the terms *tenure* and *tenure-holder* occur, they include *under-tenure* and *under-tenure-holder*.

Mediately under raiyats.—Here is as distinct a recognition of the under-raiyats' right of subletting as was of the raiyats' of doing so in Act X of 1859 (sec. 6). Twenty-five years after the recognition of the raiyats' power of subletting, the all but unanimous opinion is that "Subletting is mischievous and calculated to cause a good deal of difficulty and inconvenience. It would be an excellent thing if it could be prevented. But it is impossible to do so now. If it is made illegal by law and the Courts refuse to recognize it, that will only increase the evils of the system." It is to be hoped that, under the provisions of this Act which make the incidents of all grades of under-raiyats' tenancy the same, the recognition in this section will not give rise in the future to as difficult and inconvenient a result as the recognition in section 6 of Act X has done at the present time.

Meaning of "tenure-holder" and "raiyat."

5. (1) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(2) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a raiyat, unless he holds land either immediately under a proprietor or immediately under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—

(*a*) local custom ; and

(*b*) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard bighas, the tenant shall be presumed to be a tenure-holder until the contrary is shewn.

Tenure-holders and raiyats.—The position of this section, removed as it is from under section 3 which deals with definitions, clearly indicates, what was expressly stated in Council, that it is attempted here only to *describe* and not to *define* the terms "tenure-holder" and "raiyat." The difficulties of a positive definition of these terms have been summarized in para. 20 of Rent Commission Report (R. C. I. 12).

The distinction between a tenure-holder and a raiyat is drawn in this section from "the original conception of a raiyat that he enters on the land for the purpose of cultivating it, or bringing it under cultivation by his own personal labour, or by that of his servants or followers" (R. C. I. 13). And this is consonant with the rulings under the repealed Acts. In *Ram Mangal Ghose* v. *Lakhi Narain Shaha*, 1 W. R. 71, the distinction between these two classes was thus drawn: "The question is whether defendant was or was not a raiyat, who held land under cultivation by himself, or others who took for him under his supervision as a superior cultivator, or whether he was a middleman, because he really did not cultivate but was a general lease-holder or a *speculator in land-rent*." This distinction was followed in *Karoo Lal Thakur* v. *Lachmipat Dugar*, 7 W. R. 15. In *Kali Charan Sing* v. *Amiruddin*, 9 W. R. 579, it was remarked that raiyats are "those who are *bonâ fide* actual cultivators in the sense that they derive their profits from the produce directly," and middlemen those "who have no connection with the produce, except by receiving the rents in cash or kind." "The only test of a raiyati interest," observed Field, J., in *Durga Prosonna Ghose* v. *Kali Das Dutt*, 9 Cal. 449, "is to see in what condition the land was when the tenancy was created. If raiyats were already in possession of the land and the interest created was a right, not to the actual physical possession of the land, but to collect the rents from those raiyats, that, we think, is not a raiyati interest. If, on the other hand, the land was jungle, or uncultivated or unoccupied, and the tenant was let into physical possession of the land, that would be a raiyati interest, and the nature of this interest so created would not, according to a number of decisions of this Court, be altered by the subsequent fact of the tenant subletting to under-tenants."

Where land is let by a written lease, and it clearly indicates the intention of the lessee, there is no difficulty in determining the class of the tenancy. But

where there is no written lease, and the intention of the parties cannot be discovered, either because it is an old tenancy or for other reasons, it is difficult to determine the class of the tenancy. Such a determination, however, is essential to settle the rights and liabilities of the holder against, and to, his landlord and his tenants. To give the Courts assistance to come to a decision, a rule has been laid down (clause 5), that there should always be a presumption that a tenancy of more than 100 bighas is a tenure and not a raiyati-holding. The presumption is based on the fact that nowhere in Bengal does a man take such a large holding as 100 bighas, with the object of cultivating more than a small portion of it himself.

Primarily.—It is important to bear in mind that the description of "tenure-holder" and of "raiyat" is not meant to be exhaustive, as the occurrence of the word "primarily" in sub-sections (1) and (2) clearly indicates.

To hold land for the purpose of collecting rents.—The words "to hold land" were added to exclude agents. They acquire a right to collect rents; but they do not hold land.

Bringing it under cultivation by establishing tenants on it.—These words were added to include the jungleburi talukdars who take waste land in order to reclaim it by establishing tenants on it.

With the aid of partners.—It may be generally said that where the intention of the parties cannot be ascertained, and where waste land is reclaimed by a tenant, he is a tenure-holder under this Act, if he gets a substantially higher rent in the long run from the tenants whom he establishes on it than what he pays to his landlord; and the tenants so established are raiyats under him. If, on the other hand, he makes no substantial profit from the tenants so established, he is to be deemed a raiyat, and the tenants established for reclamation, his partners, *i. e.*, also raiyats.

Land.—We have seen that in relation to 'estate' the term *land* includes the surface of land, as well as woods and water thereupon; but that in relation to 'tenant' the term excludes pastures, forests, fisheries and the like, when these stand by themselves. The term has this latter sense in fulness when used in relation to 'tenure-holder' who is the highest class of tenants. In relation to raiyat, however, the term has a narrower signification. Land, the subject of a raiyati-holding, is land which is or was acquired for the purpose of cultivation. If acquired for such purpose, it does not cease to be land for cultivation, though used for the purpose of grazing cattle, or for gathering the produce of it (sub-section 2, exp.). It may further be used for purposes incidental to cultivation, *e. g.*, construction of wells, tanks or water-channels, or for erection of dwelling-houses and out-offices (sec. 76). If diverted to other purposes than what are thus allowed, the land *ceases to be used* for the purpose for

which it was acquired; and the landlord may sue the raiyat for ejectment under section 25. But if he fails to do so, the land does not *of itself* cease to be the subject of a raiyati-holding. In other words, all that is necessary for land to be, or to remain, the subject of a raiyati tenancy, is that it was acquired for the purpose of cultivation: the subsequent diversion of the purpose gives the landlord a right to eject the raiyat, but does not prevent the raiyat, if the landlord does not choose to assert his right, to continue to have, or to acquire, a right of occupancy.

Rulings under the repealed Acts.—Under the repealed Acts it was held that land, the subject of a raiyati-holding (*i.e.*, in which an occupancy-right could be acquired, and to which the rules of enhancement contained in section 17, Act X of 1859, or section 18, Act VIII B. C. of 1869 applied) included (1) bastu land on which a raiyat's house was built and forming a part of his holding (*Naimudda Jowardar* v. *Scott Moncrieff*, 3 Beng. A. C. 283, 12 W. R. 140); and (2) land for grazing horses when the tenant was a breeder of horses (*Fitzpatrick* v. *Wallace*, 11 W. R. 231). [The first case is now expressly included (sec. 76); and the second case would seem to be covered by the words "grazing cattle on it" in the explanation to sub-section 2. The word *cattle*, if strictly interpreted, does not include horses, but in its enlarged sense, includes sheep, horses, goats, mules, asses and swine.]

But such *land* was held, under the repealed Acts, *not* to include (1) land on which a *basha-bari* or lodging-house was built (*Kali Kishen Biswas* v. *Srimati Janki*, 8 W. R. 250); (2) land used or let for building purposes (*Kali Mohun Chatterjee* v. *Kali Kishen Roy Choudhuri*, 2 Beng. App. 39, 11 W. R. 183; *Mohar Ali Khan* v. *Ram Ratan Sen*, 21 W. R. 400); (3) land on which a church or school had been erected (*Rani Sarnamayi* v. *Rev. C. Blumhardt*, 9 W. R. 552); (4) house and its grounds (*Khairuddin Ahmed* v. *Abdul Baki*, 9 Beng. 103, note); (5) land in a town not used for agricultural or horticultural purposes, nor for purposes incidental thereto (*Madan Mohun Baisack* v. *Stalkartt*, 9 Beng. 97, 17 W. R. 441; *Church* v. *Ram Tanu Shaha*, 9 Beng. 105, note; *Rani Lalan Mani* v. *Raja Ajodhya Ram*, 23 W. R. 61; *Rani Durga Sundari* v. *Bibi Omdatanessa*, 9 Beng. 101; *Brajanath Kundu Chowdry* v. *Lowther*, 9 Beng. 121, 17 W. R. 183); (6) jalkar (*Umakant Sarkar* v. *Gopal Sing*, 2 W. R. X. 19; *Syamnarain Chowdry* v. *Raja of Durbhanga*, 23 W. R. 432); (7) land below a jalkar, when the tenants held the jalkar (*Bishenlal Das* v. *Rani Khyrinnessa Begum*, 1 W. R. 78); (8) tank, used for preservation of fish, not forming a part or an appurtenance to any land (*Shibu Jalia* v. *Gopal Chandra Chowdry*, 19 W. R. 200; *Nidhi Krishna Bose* v. *Ram Das Sen*, 20 W. R. 341). The decision in *Guru Dayal* v. *Ram Dutt*, 1 Agra, F. B. 15, which ruled that a raiyat did not acquire occupancy-right in land, of which he cut grass or other spontaneous produce, is set aside by the express provisions of the explanation to sub-section 2.

It was also held under the repealed Acts that *land*, which was the subject of a raiyati-holding, did not cease to be so, merely by the raiyat's diverting the purpose for which it had originally been acquired : thus, when a raiyat took land for agricultural purposes and erected shops and hired them out (*Khujurennessa Begum* v. *Ahmed Reza*, 11 W. R. 88); or erected a *pucka* building on it (*Naimatulla Ostagar* v. *Gobind Chandra Dutt*, 6 W. R. X. 40); or built a homestead and used a part for tank and garden (*Prasanna Kumar Chatterjee* v. *Jagernath Bysak*, 10 Cal. 25).

Land on which buildings stand.—Land, on which buildings were erected, was not the subject of a raiyati-holding under the old Acts, unless it was originally acquired for purposes of cultivation. The incidents of holding such land depended on the contract of parties ; and when there was no permanent grant made to the lessee, he was liable to be ejected (*Prasanna Kumari Devi* v. *Ratan Bepari*, Ind. 3 Cal. 696 ; *Adaito Charan De* v. *Peter Das*, 13 Beng. 417, note, 17 W. R. 383 ; *Arut Shahu* v. *Prandhan Pykura*, Ind. 10 Cal. 502). A permanent grant might, however, in the absence of an express contract, be presumed from the conduct of parties, and the length of possession (*Prasanna Kumar Chatterjee* v. *Jagannath Baisack*, 10 Cal. 25 ; *Gungadhar Shikdar* v. *Aimaddin Biswas*, Ind. 8 Cal. 960). The law on the subject has been altered now in favour of the raiyat regarding land on which his homestead stands ; and he may acquire a right of occupancy in such land even if it is held by itself, without being a part of a holding, unless there is a custom to the contrary (sec. 182).

Sub-section 3.—But for this sub-section the description of "raiyat" would have included under-raiyats on the one hand, and proprietors or tenure-holders, who cultivate their own lands, on the other. "Proprietor" including the Government in respect of khas mahals, the rights of the raiyats in khas mahals would be the same as those of all other raiyats.

Sub-section 4.—There is scarcely any local custom to distinguish a tenure-holder from a raiyat, though there is local custom under which tenancies are heritable or transferable by sale.

Sub-section 5.—The presumption, here enacted, is only a rebuttable one. The Rent Commission had recommended it to be made conclusive. The presumption arises both against the landlord of the tenure-holder and in favour of his raiyat. It is to be noted that a tenure may be of any size. And in case of a tenancy which is less than 100 bighas, no presumption arises that it is a holding in preference to a tenure.

Permanent tenure.—A tenure is permanent under this Act, if it is heritable and not limited in time. Transferability is an incident of a permanent tenure, and not its essence. All permanent tenures are transferable under section 11 of this Act. But that section, in particular, and the remainder of this Act generally, do not apply to Ghatwali or other service tenures.

A tenure may be permanent (1) by the express provision of the law, (2) by contract, (3) by custom, and (4) by course of dealing therewith (D. 25). It was remarked, in *Watson* v. *Mohes Narain Roy*, 24 W. R. 176, by their Lordships of the Privy Council that in order "to determine the question whether a pottah conveyed an estate for life only or an estate of inheritance, their Lordships must arrive as well as they can at the real intention of the parties, to be collected, chiefly, no doubt, from the terms of the instrument, but, to a certain extent, from the circumstances existing at the time of its execution, and, further, by the conduct of the parties since its execution."

Permanent by law.—Patnidars of the different grades are permanent tenure-holders under Regulation VIII of 1819. So also are the dependent talukdars, mentioned in sections 7, 8 and 9 of Regulation VIII of 1793, under that Regulation.

Permanent by contract.—Where the lease contains a condition that the tenure will descend from generation to generation, the case is a clear one. So also if the lease contains a clause of inheritance, such as "with your sons and grandsons in succession" (*Watson* v. *Jogeshvar Atta*, Marsh. 330) ; or, "to be held by lessee and after her by her children successively" (*Bhuban Mohini Debi* v. *Haris Chandra Roy Chowdry*, Ind. 4 Cal. 23). When a lease contained a condition, that if the lessor did not accept the lease to be hereditary, it would hold good for one year only, and the lessor did not put an end to the lease after one year, it was held that the lessee acquired a hereditary tenure (*Leckraj Roy* v. *Kannya Sing*, Ind. 3 Cal. 210). A jungleburi lease reserving no rent for 1260, rent at one rupee per kanee for 1261, at 2 rupees per kanee for 1262, at 3 rupees per kanee for 1263, and at the *fixed rate* of five rupees per kanee thereafter, has been held to create a permanent tenure (*Golam Ali* v. *Gopal Lal Tagore*, 9 W. R. 65, and 19 W. R. 141 in P. C.). The words *thica mahto* in a pottah have been held not to import a permanent tenure (*Nafar Chandra Shaha* v. *Gossain Sing Bharati*, 3 W. R. X. 144) : nor the words "year by year" (*Panchanan Bose* v. *Pyari Mohan Deb*, 2 W. R. 225). The terms táluk, patni-táluk and jungleburi-táluk, have been held to import *primâ facie* a permanent tenure (*Krishna Chandra Gupta* v. *Mir Safdar Ali*, 22 W. R. 326 ; *Tarini Charan Gangooly* v. *Watson*, 3 Beng. A. C. 437, 12 W. R. 413 ; *Golam Ali* v. *Gopal Lal Tagore*, 9 W. R. 65). The term *mokarari*, it is settled law, does not import by itself a permanent tenure (*Government of Bengal* v. *Nawab Jafer Hossein Khan*, 5 Moore, 467 ; *Modi Narain Sing* v. *Kant Lal*, S. D. 1859, 1572 ; *Sheoprasad Sing* v. *Kali Das Sing*, Ind. 5 Cal. 543 ; and in appeal to P. C., *Bilas Mani Dasi* v. *Raja Sheoprasad Sing*, Ind. 8 Cal. 664). The meaning of the term "mokarari istemarari" is also now finally settled. The Sadar Dewani Adalat all along held that the term did not convey a hereditary right, unless words

of inheritance, such as, *bafarzun* or *naslun bad nasl*, were contained in the body of the deed (*Tulsi Narain Shahu* v. *Modi Narain Sing*, S. D. 1848, 752, *Amirannessa Begum* v. *Hetnarain Sing*, S. D. 1853, 648). But the High Court held that the term "mokarari istemarari" conveyed a hereditary right, in the absence of any evidence to show that it was meant to be a grant for life only (*Lakhu Koer* v. *Hari Krishna Sing*, 12 W. R. 3, 3 Beng. A. C. 226). Next the Privy Council, in *Raja Lilanand Sing* v. *Thakur Monoranjan Sing*, 13 Beng. 133, remarked that, "though it may be doubtful, whether the words 'mokarari istemarari' mean permanent during the lifetime of the person to whom the grant was made, or permanent as regards hereditary descent, their Lordships are of opinion that, coupling those words with the usage," proved in the case, the tenure under consideration was hereditary. And lastly, their Lordships in *Tulsi Narain Sing* v. *Ram Narain Sing*, Ind. 12 Cal. 117, have held that the term "istemarari mokarari" does not, *per se*, import an estate of inheritance without words, such as, *bafarzun* or *naslun bad nasl*. They remarked that though the lexicographical meaning of the term is perpetual *for ever*, its customary meaning is perpetual *for life*. The High Court ruling, in *Lakhu Koer* v. *Hari Krishna Sing*, 12 W. R. 3, 3 Beng. A. C. 226, was thus set aside.

Permanent by custom.—In *Jaikishen Mookerjee* v. *Rajkissen Mookerjee*, 1 W. R. 153, it was remarked that "in every district of Bengal there is different custom, and this question (of the nature of the tenancy) can only be decided by reference to local custom. What is the custom in Lower Bengal is not so in eastern or northern part, and *vice versâ*." In *Hari Mohan Mookerjee* v. *Rani Lalan Mani*, 1 W. R. 5, it was observed, "the howlas and nim-howlas of Backerganj and the jotes of Rungpore are heritable by custom." It has been held that the sarbarakari tenures of Katak are permanent by custom (*Sudananda Mytee* v. *Noboratan Mytee*, 8 Beng. 280, 16 W. R. 289).

Permanent by course of dealing.—Continuous payment of rent for about a hundred years was held to give rise to a presumption that the tenure was permanent (*Brajanath Kundu Chowdry* v. *Lakhinarain Addy*, 7 Beng. 211). Where the lease contained no condition that the tenure was to be held from generation to generation, the fact that the tenure actually descended from father to son, has been held to supply the omission (*Dhanpat Sing* v. *Gooman Sing*, 11 Moore, 433, 9 W. R. P. C. 3; *Gopal Lal Tagore* v. *Tilak Chandra Ray*, 3 W. R. P. C. 1; *Satya Saran Ghosal* v. *Mohesh Chandra Mitter*, 11 W. R. P. C. 10; *Karankar Mahata* v. *Niladra Chowdry*, 14 W. R. 107; *Kuladip Narain Sing* v. *Government of India*, 11 Beng. 71; *Watson* v. *Mahes Narain Roy*, 24 W. R. 176).

Lakhiraj.—The word lakhiraj (from *khiraj*, revenue) radically means revenue-free land. But, in use, it is applied to all kinds of land held either revenue-free or rent-free. We have seen that revenue-free land falls within the definition of "estate" under this Act, whether it is registered or not, and the holder of such lakhiraj is a proprietor. Rent-free land may either be a tenure or a holding or an under-holding under this Act, according to the purpose for which, and the status of the person under whom, it is held. When the purpose of its acquisition is the collection of rent from the tenants of the land, and the person under whom it is held is a proprietor or a tenure-holder, the lakhirajdar is a tenure-holder. But when under any such person he holds for the purpose of cultivation, he is a raiyat. When, however, he holds under a raiyat, he is an under-raiyat irrespective of the purpose of acquisition.

Under-raiyat.—It is to be noted that the status of an under-raiyat does not depend on the purpose for which land is held. Every tenant who holds land under a raiyat is an under-raiyat, whether his purpose be to collect rent or to cultivate the land. A tenant, therefore, who holds land of a raiyat for the purpose of collecting rent from the sub-lessees, is an under-raiyat, and not a tenure-holder; because he does not hold under a proprietor or a tenure-holder.

CHAPTER III.

TENURE-HOLDERS.

THIS Chapter deals with the rights and liabilities that attach specially to the highest class of the tenants, *i.e.*, the tenure-holders. It will be remembered, that tenure-holders always include under-tenure-holders. The rights and liabilities, which attach to tenure-holders in common with other classes of tenants, are dealt with in Chapter VIII and the subsequent Chapters.

Enhancement of rent.

Tenure held since Permanent Settlement liable to enhancement only in certain cases.

6. Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

(a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under which the tenure is held, or

(b) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

Old Acts.—Regulation VIII of 1793, section 51, clause 1.

It is to be noted that the increase of rent, on account of an increase of area, is no longer "misnamed" enhancement. Section 52, *post*, provides for such increase.

The present section must be read with section 50 of this Act and section 47 of Regulation VIII of 1793. Section 50 of this Act replaces *inter alia* sections 15 and 16 of Act VIII of 1869 and sections 16 and 17 of Act X of 1859, and re-enacts the rules and presumptions as to fixity of rent. Section 49 of Regulation VIII enacts that the rent of an istemarardar (mokararidar), who held land for a fixed rent from twelve years before the Permanent Settlement, is not liable to any enhancement of rent; nor is he liable to enhancement, if the zemindar or other actual proprietor has made an engagement on the point with him. The operation of this unrepealed section of Regulation VIII may now be considered to be almost spent out.

The result of sections 6 and 50 of this Act taken together, is—

(1) a permanent tenure, held from the Permanent Settlement on the same rent, is not liable to enhancement of rent;

(2) a permanent tenure, held from the Permanent Settlement but not on the same rent, is liable to enhancement but only on the grounds specified in the present section;

(3) a permanent tenure, created after the Permanent Settlement, is liable to enhancement of rent on any reasonable ground.

The provisions of the repealed section 51 of Regulation VIII of 1793 were substantially the same as those contained in this section. But, whereas that section applied only to dependent taluks, this section applies to *all* tenures existing at the time of the Permanent Settlement. A *ryoti kadimi* tenure did not fall within section 51 of the Regulation (*Ram Chandra Dutt* v. *Jogesvar Dutt*, 12 Beng. 232); but it falls within this section.

Local custom.—These words replace "special custom of the district" of section 51 of the Regulation. The range, of the custom to be appealed to, is thus a little widened.

Otherwise than on account of a diminution of area.—These words were added with the intention of making it clear that a decrease of rent obtained for diluvion or under the provisions of the Land Acquisition Act, 1870, would be no

ground for enhancement of rent. A decrease of rent for decrease of area still continues to be "misnamed" *reduction* of rent (sec. 52).

Held from the Permanent Settlement.—It has been held, overruling a series of Sadar Dewani Adalat rulings, that, in order to bring a tenure within the meaning of these words, it is not necessary to show that the tenure was registered under section 48 of Regulation VIII of 1793 : it is sufficient that the tenure existed at the time of the Permanent Settlement, and was capable of being so registered : (*Bama Sundari Dasi* v. *Radhika Choudhrain*, 4 Beng. P. C. 8, 13 W. R. P. C. 11 ; *Raja Nilmani Sing Bahadur* v. *Ram Chakravarti*, 21. W. R. 439.) The fact, of a *shikmi* taluk not being mentioned in the decennial or quinquinnial settlement, does not afford any ground for inferring against its existence at that time (*Wise* v. *Bhubanmayi Debi*, 10 Moore, 165) ; for the holder of such a taluk did not pay his rent direct to the Government, and it was therefore not necessary to mention the tenure in the settlement.

The onus of proof.—The onus of proof, that the tenure has been held from the time of the Permanent Settlement, lies on the tenure-holder, and, when he has succeeded to prove that much, the onus shifts to the landlord to prove that the rent is liable to enhancement under any of the grounds mentioned in this section (*Bama Sundari Dasi* v. *Radhika Choudhrain*, 13 W. R. P. C. 11, 4 Beng. P. C. 8). But in the case of a dependent taluk which became so by the resumption of an invalid lakhiraj, the onus is on the landlord to show that the tenure has not been held from the time of the Permanent Settlement, but was created afterwards (*Assanulla* v. *Basarat Ali Chowdry*, Ind. 10 Cal. 920). The reason of this difference of onus is thus explained. There is a *presumption* that the zemindar is entitled to enhance the rents of all lands *situated within his zemindari*. The effect of this presumption is to cast upon the defendant the burden of showing that the land held by him is an exception to that general rule. But before this presumption can apply, it must be shown that the lands, to which it is sought to apply it, were *included in the zemindari* at the time of the Permanent Settlement. At that time *lakhiraj* grants, antecedent to 1790, were not included within the zemindari, though such grants after 1790 were included. Whether the resumed lakhiraj belongs to the former class or to the latter, is a matter of evidence. And, till the plaintiff proves that it belongs to the latter class, the *presumption* does not arise, nor is the onus thrown on the defendant. (Field, J., *Ibid.*)

Plaint.—"Reduction of rent" mentioned in clause (*b*) means a reduction on account of some definite reason. An assertion, that rent has gradually and by degrees become less, will, therefore, be not sufficient to show that there is a cause of action (*Nobo Kissen Majumdar* v. *Tara Mani*, 12 W. R. 320). In the plaint of

a suit for enhancement of rent under clause (*b*), the time when, and the reason why, the tenure-holder received an abatement, and thereby rendered the tenure liable to enhancement of rent, should be stated (*Nobo Kissen Bose* v. *Mazamaddin Ahmed*, 19 W. R. 338).

No notice of enhancement necessary.—It is no longer necessary to serve a notice specifying the enhanced rent and the grounds on which enhancement is claimed. The service of such a notice was heretofore a condition precedent to bringing a suit for enhancement. The reason, which induced the notice to be altogether dispensed with, was thus put by the Rent Commission (R. C. I., 34) :—"Such a large percentage of enhancement cases have failed, because it was not found that the notice had been served or because the notice was defective in form, that it has appeared to us highly expedient to do away with a detail, the practical result of which has been to delay and impede a decision of the real question at issue between the parties. We have, accordingly, made the *institution of the suit to be notice to the tenant.* Under the existing law, the enhancement notice must be served in districts, or parts of districts, where the Faslí year prevails, in or before the month of Jyet, and in districts, or parts of districts, where the Bengalí year prevails, in or before the month of Pous. The very proper and reasonable object of this is, that the raiyat may know the fact of increased rent being claimed in such time as will enable him to relinquish the land before the end of the agricultural year, if he is unwilling to hold it at an increased rent." This object is now effected by providing that a decree for enhancement, in a suit instituted within the first eight months of the agricultural year, shall take effect from the next agricultural year, and that, in a suit instituted in the last four months of such year, from the commencement of the year next but one following (sec. 154). "This will enable the summons in the suit to be served at or before the time at which the notice is now served, and the tenant will therefore have an equal facility to relinquish the land before the close of the agricultural year, if he is unwilling to hold it at an increased rent."

It has been asked "now that, for a suit for enhancement of rent, notice is unnecessary, is demand equally so? may not the tenant still say to the landlord: 'you have no cause of action against me; had you demanded the rent you now seek, I would have consented to it, or surrendered the tenancy?'" The reply to the above question is found in the answer that is given to the following or like questions. Is demand necessary before a tenant may sue for reduction of rent? Is it required when the landlord sues for increase of rent for increase of area? In such cases, demand is not necessary to perfect the right of suit. Similarly, no demand is necessary to perfect the right of the landlord to sue for enhancement of rent. If the tenant either confesses judgment or elects to surrender the tenancy, then only the question of demand arises, merely to settle if the landlord is entitled to the costs

of the suit. It is only in exceptional cases that a landlord sues for enhancement before he makes a demand. It is still rarer in such cases for the tenant to confess judgment or to surrender the tenancy. The question of demand, thus, will scarcely be of any practical importance. But if such a case happens, it is submitted, that the landlord will not be entitled to costs, if he has made no previous demand.

Limits of enhancement of rent of tenures.

7. (1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

Old Acts.—This sub-section is new. It codifies the existing case-law on the point.

Customary rate in the vicinity.—This term now replaces the old familiar term "perganá rate." The application of this sub-section will be very limited. The existence of any customary rate is rare in these provinces. So early as 1812, Mr. Colebrooke stated—"there is reason to presume that the perganá rates are become very uncertain" (Har. III, 483), and proposed a rule for the adjustment of the dependent talukdars' rent which was incorporated in section 8 of Regulation V of that year, and has now been revived in sub-section 3.

Similar tenures.—Both these words are important. The second word shews that the same class of tenants must be taken for comparison; the rent of a tenure-holder cannot be enhanced to the limit of the rent of the raiyat. The word "similar" further shews that tenures of the same grade should be taken for comparison; a patni tenure's rent could not be enhanced to the limit of a darpatni or a sepatni tenure's rent.

Subject to any contract between the parties.—The term "mokarari" means fixed; and a lease described as mokarari conveys a grant of land at a fixed and unenhanceable rent. A lease reserving no or low rent for the first few years and a uniform rent of Rs. 5 per kani thereafter, has been held to fix the rent for ever. (*Golam Ali* v. *Gōpal Lal Tagore*, 9 W. R. 65, and in appeal to P. C. 19 W. R. 141.) But a lease reserving no or low rent for the first few years and *customary* rent or rent at *purá dastur* (full rate) thereafter, does *not* fix the rent for ever. (*Bharat Chandra Aich* v. *Gourmani Dasi*, 11 W. R. 31; *Kasi Mudi Khandkar* v. *Nade Ali Tarafdar*, 11 W. R. 164.)

May be enhanced up to the limit of customary rate.—The language of this sub-section seems to leave it to the discretion of the Court to decree enhancement, either to the full standard of customary rate or to a lower standard, according to

the circumstances of each case. Though there are no limiting words in this section, as in section 30, clause (*a*), and though sub-section 2 is limited only to where no customary rate exists, yet the absence of any reference to the similarity of lands in this sub-section tends to shew that discretion is left to the Court. An example will clearly shew the necessity of giving such discretion. A jungleburi tenure-holder had to spend a considerable sum of money to reclaim the lands. There are other jungleburi tenures in the vicinity who pay a customary rent of Rs. 2 per bigha, but they had not to spend for reclamation one-tenth of what the former had. Is the Court bound to raise up the rent of the former to the full standard of Rs. 2 ? It is submitted, no. The Court in using its discretion will look, among others, to the points mentioned in sub-section 3.

Rulings under the repealed Acts.—An intermediate holder is not liable to pay the rate of the rents paid by cultivators so as to make the tenure void of all reasonable profits. (*Gouri Prasad Das*, v. *Rani Sarnamayi*, 6 W. R. X. 41 ; *Hara Sundari Choudhurain* v. *Ananda Mohan Ghosh*, 7 W. R. 459 ; *Monikarnika* v. *Anandamayi*, 10 W. R. 245.) A talukdar is liable to be enhanced only to the extent of what other similar talukdars in the neighbourhood pay for similar under-tenures *with similar lands*. (*Mahim Chandra De* v. *Guru Das Sen*, 7 W. R. 285.) When the suit is against an intermediate tenant, the enhancement ought to be made according to the perganá rate of the rents payable not by the raiyats, but by the holders of similar tenures. To assess such an intermediate tenure according to the rents payable by raiyats, must necessarily deprive the tenant of all beneficial interest in the tenure. (*Dhanput Sing* v. *Gooman Sing*, 9 W. R. P. C. 3.) The rent of a taluk, if liable to enhancement, could only be enhanced according to the perganá rate of the rents payable by similar holders. (*Gopal Lal Tagore* v. *Golam Ali*, 19 W. R. 141, P. C.)

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

The application of this sub-section is expressly limited to cases where no customary rent can be found. No presumption arises in the case of tenure-holders as in that of occupancy-raiyats, that the existing rent is fair and equitable. To determine what is fair and equitable, the Courts shall be guided by the rules of the next sub-section.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than ten per centum of the balance which remains after deducting from the

gross rents payable to him the expenses of collecting them, and shall have regard to—

(a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors in interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(b) the improvements, if any, made by the tenure-holder or his predecessors in interest.

Old Acts.—The first part of this sub-section is a partial resuscitation of section 8 of Regulation V of 1812, which was repealed by Act X of 1859, "but," said the Rent Commission, "by some oversight, no provision was substituted." Section 8 of Regulation V provided that, in adjusting the jamá of a dependent talukdar, a deduction should be allowed from the rent computed according to the rates payable by cultivators at the rate of 10 per cent. for the talukdar's profit over and above a reasonable allowance for charges of collection. It will be noted that there are three points of difference between the old law and the present one: 1. Under the former, calculation was based on the rent payable by cultivators, under the latter, it is to be made on rent payable to the tenure-holder by his tenants who may be either raiyats or tenure-holders. 2. The former applied to talukdars only, the latter applies to all tenure-holders. 3. Ten per cent. was the fixed profit under the old law; the present law only fixes the minimum of such profit at ten per cent., and it may be very much higher. At one time the maximum was also proposed to be fixed at 30 per cent., but this has now been left to the discretion of the Courts.

In the case of jungleburi-tenures, the Rent Commission recommended a profit of *not less than* 20 per cent. This has also been left to the Courts to be decided with regard to the circumstances under which the tenure was created and the improvements made by the tenure-holder.

Gross rents.—"Rent" has not here the limited meaning as given in its definition in section 3, clause 5, as is clear from the context. Here, rent includes all returns that the tenure-holder receives in money, things or service, for all kinds

of land, agricultural or otherwise, and for woods or water thereupon. A, landlord, sues to enhance the rent of a tenure-holder B. The tenure contains 500 bighas of agricultural land let to several raiyats, a fishery let to C, a forest to D, and 20 bighas of land to E for building a factory. The returns made by C, D and E are not rent within the definition in section 3, clause 5, but they should be included in "gross rents" mentioned in this sub-section.

Payable.—In "gross rents payable," the word *payable* means what is actually due, but *not* any return which waste land would be *capable* of making if brought under cultivation. For additions, which have to be made in the calculation to gross rents actually payable, *see* sub-section 4.

Rulings under the old Acts.—A profit of 6½ per cent. was not sufficient. But such a profit, on a calculation in which bastu and other lands were put at a lower than the actual rate, taken with an allowance of 2 katas per bigha of lands bearing two crops, was held to be sufficient profit. (*Rani Sarnamayi* v. *Gouri Prasad Das*, 3 Beng. A. C. 270.) In a jungleburi-tenure where the tenure-holder paid at 14 annas when he received at Re. 1-4 per bigha, it was held that it was only fair that he should pay Re. 1 when he received Re. 1-8 per bigha. (*Bharat Chandra Aich* v. *Gour Mani Dossi*, 11 W. R. 31.)

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

This sub-section enumerates the additions to be made to the gross rent actually payable to the tenure-holder in making the calculation under the preceding sub-section. "*Beneficial rent*" includes all rent that is less than full rent.

Power to order gradual enhancement.

8. The Court may, if it thinks that an immediate increase of rent would produce hardship, direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five, until the limit of the enhancement allowed has been reached.

This is new.

The reason for making this provision is to allow the tenure-holder, in case of any large enhancement, to adapt himself gradually to the alteration of his circumstances and to avoid immediate ruin.

9. When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

Rent once enhanced may not be altered for fifteen years.

This is new.

The provisions of this section give considerable rest to enhancement litigation. But it will be noted that, unlike the provisions regarding the occupancy-raiyats, this section does not bar a subsequent suit for enhancement within fifteen years, if the prior suit was dismissed on the merits; nor does it bar enhancement by contract within the protected period.

When enhancement is made gradual, as under the provisions of the preceding section, the fifteen years should be calculated from the first year of such gradual enhancement; for there *was* enhancement in the first year, though for the benefit of the tenant it took effect only partially.

Other incidents of tenures.

10. A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected:

Permanent tenure-holder not liable to ejectment.

Provided that where the contract is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

This is new.

Ejectment of permanent tenure-holder.—Along with this section must be read sections 65, 89 and 155, and section 178, sub-section 1, clause (*c*).

Section 65 enacts that a permanent tenure-holder shall not be ejected for arrears of rent.

Section 89 enacts that a tenant shall not be ejected from his tenure except in execution of a decree.

Section 178, sub-section 1, clause (*c*), enacts that no contract made with the landlord, either before or after the passing of this Act, shall entitle a landlord to eject his tenant, otherwise than in accordance with the provisions of this Act.

Section 155 enacts that (1) a suit for ejectment shall not be entertained, unless (*a*) the landlord has served a notice on the tenant specifying the particular breach of condition and requiring the tenant to remedy the breach, where it is capable of remedy, and to pay compensation for the breach; and (*b*) the tenant has failed within a reasonable time to comply with the requisition: (2) a decree in such a suit shall (*a*) declare what compensation is payable to the landlord for the breach; (*b*) declare whether the breach is capable of remedy or not; and (*c*) fix a time (which may be extended) for paying the compensation and remedying the breach, if capable of remedy: and (3) a decree for ejectment shall not be executed if the tenant pays the compensation and remedies the breach, if capable of remedy, within such time.

Thus, there will be no ejectment except in extreme cases, where the tenant is utterly recusant, or where he had committed a breach which is irremediable.

Some of the results of these sections taken together may here be usefully summarized :—

1. A permanent tenure-holder shall not be ejected except by suit, notwithstanding anything in a contract made with his landlord, either before or after the passing of this Act, to the contrary.

2. A suit for ejectment shall not lie if notice under section 155 has not been served on him, and a reasonable time has not expired after notice, and shall not lie except on the ground that the tenure-holder has violated a condition carrying forfeiture.

3. He shall not be ejected for arrears of rent as such. But if arrears of rent be a condition of forfeiture in a contract made before the commencement of this Act, he may be ejected after his double failure, once after notice and next after decree, to pay compensation. A condition of forfeiture for arrears of rent is void, if made after the commencement of this Act.

4. He may be ejected for breach of condition carrying forfeiture as penalty other than that of forfeiture for arrears of rent, after such double failure to pay compensation and remedy the breach where remediable; but such condition must be consistent with the provisions of this Act, if the contract was made after the commencement of this Act.

5. He shall be ejected for breach of condition carrying forfeiture as penalty, and consistent with the provisions of this Act, if the contract was made after the commencement of this Act, when the breach is irremediable.

Besides that relating to arrears of rent, the following conditions, among others, are inconsistent with the provisions of this Act: that the tenure-holder shall be ejected (1) if he transfers or bequeaths his tenure (sec. 11); (2) or if he claims

decrease of rent for decrease of area (sec. 52); (3) or if he does not pay interest on arrears of rent at more than 12 per cent. (sec. 67); (4) or if he does not pay abwabs (sec. 74); (5) or if he grants a permanent mokarari lease (sec. 179).

Ejectment of a non-permanent tenure-holder.—It is to be noted that neither this section nor section 65 applies to a tenure-holder with a limited interest, though sections 89 and 155 and section 178, sub-section (1), clause (*c*), do so apply. A tenure-holder with limited interest, therefore, shall not be ejected but by suit. But he may be ejected for arrears of rent or for breach of *any* condition of his lease which carries forfeiture. Ejectment, however, for breach of condition may be obtained only after the formalities of section 155 have been gone through.

Rulings under the repealed Acts.—Under the old law also, a tenure-holder was liable to ejectment only under conditions of his lease, and not for arrears of rent as such. (*Mohant Balaram Das* v. *Jogendra Nath Mullick*, 19 W. R. 349, *Mumtaz Bibi* v. *Giris Chandra Choudhuri*, 22 W. R. 376.) In this last case, it was further held that where the lease contained a condition of forfeiture for arrears of rent, the tenure-holder's liability to be ejected was absolute. But that ruling must be considered as set aside by the subsequent cases. In *Duli Chand* v. *Meher Chand*, 12 Beng. 439, P. C., *Mathura Mohan Pal* v. *Ram Lal Bose*, 4 Cal. 469, *Mahamad Amir* v. *Priyag Sing*, Ind. 7 Cal. 566, 9 Cal. 185, and *Duli Chand* v. *Raj Kisore*, Ind. 9 Cal. 88, the Court granted time to pay up arrears and compensation, sometimes on the ground of equity, and at others because section 78 of Act X of 1859, or section 52 of Act VIII B. C. of 1869 was held to apply.

Under the former law also, every breach of condition of a lease did not entail forfeiture; but only breach of such a condition for which forfeiture had been contracted, to be the penalty. (*Mahamad Faez Khan* v. *Shib Doolari Tewari*, 16 W. R. 103, *Augur Sing* v. *Mohini Dutt Sing*, 2 W. R. X. 101, *Guru Prasad Sarkar* v. *Phillippe*, 2 Hay, 451, *Alum Shah Chowdry* v. *Moran*, W. R. Sp. X. 31.) In this last case it was remarked that relief against forfeiture, even when such forfeiture was expressly agreed upon by parties, ought to be granted on equitable principles, if the breach might be sufficiently compensated by granting damages. (W. R. Sp. X. 32.) In the first case, subletting was allowed to cause forfeiture under the terms of the lease, as subletting was held to be an injury that was not capable of money compensation. (16 W. R. 104.)

Limitation.—Under Article 1 of Schedule III of this Act, a suit for ejectment under this section shall be instituted within one year from the date of the breach. The notice under section 155 should be served much earlier, to give the tenant reasonable time to pay compensation and remedy the breach.

11. Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property.

Transfer and transmission of permanent tenure.

This is new.

Transferred and bequeathed.—The definition of a "permanent tenure" should be remembered. Heritability is an essence of such a tenure, and this section gives the holder the right to bequeath it by a will and to transfer it *inter vivos.*

Subject to the provisions of this Act.—Sections 12 and 17 provide that a transfer by private sale, gift or mortgage of a permanent tenure, or its share can be made only by a registered instrument. Section 88 provides that a division of a tenure or its rent shall not be binding on the landlord, unless it is made with his consent in writing. Section 181 provides that the right to transfer or bequeath, given by this section, shall not apply to Ghatwali or other service tenures. The right to transfer or bequeath is, therefore, limited by these provisions.

Whether this right of transfer and bequest is not further limited by custom, usage and customary right under the provisions of section 183, *post*, is an open question. Section 183 saves customs, usages and customary rights not inconsistent with, or not expressly or by necessary implication modified or abolished by this Act. Thus, that section is itself subject to the express and necessarily-implied provisions of this Act. We have thus section 11 limited by section 183, and section 183 limited by section 11. The question is, which is to prevail? It seems to us that the question should be answered with the help of the rule that, where there are two rules, the particular always governs the general, and that, therefore, the present section is not limited by section 183; and the right of transfer and bequest is not subject to any custom, usage or customary right.

There are, however, very few tenures which are "permanent" and not transferable by custom, except Ghatwali tenures and the mourasi sarbarákári tenures in Orissa: (*Bhuban Pari* v. *Shamanand Dey*, Ind. 11 Cal. 699.) The provisions of this Act do not apply to Ghatwali tenures (sec. 181); nor are they now in force in Orissa (sec. 1, cl. 3).

Rulings under the repealed Acts.—These rulings almost always held that a permanent tenure as defined by this Act, *i. e.*, a heritable tenure not limited in time, was transferable. (*See* rulings quoted under "permanent tenure" in section 5, *Brajanath Kundu Choudry* v. *Lakhi Narayan Addy*, 7 Beng. 211.) According to the custom of the Hooghly District, a tenure granted for building purposes where the kabulyat showed that it was not merely temporary, was held to be transferable.

(*Beni Madav Mukerjee* v. *Jay Kristo Mukerjee*, 12 W. R. 495, 7 Beng. 152). In this case Sir Barnes Peacock observed "Independently of this (*i.e.*, acquiescence) I should say if one man grants a tenure to another for the purpose of building on the land, that tenure, in the absence of any evidence to the contrary, would be assignable." This principle was followed in *Durga Prasad Misser* v. *Brindabun Sukul* (12 Beng. 109), which was a Tipperah case.

Non-permanent tenures.—This section does not apply to non-permanent tenures. Some of them are heritable; others not. A tenure for a definite period may generally be inherited or transferred for the unexpired portion of that period. A mokarari istemarari tenure by itself is only a life grant and is not inheritable. (*Tulsi Prasad Sing* v. *Ram Narain Sing*, Ind. 12 Cal. 117.) Some of the non-permanent tenures are transferable; others not. A lease for building purposes, which is not permanent, may be transferable. (*Syama Sundari Devi* v. *Nobin Chandra Kalio*, 6 Cal. 117.)

Voluntary transfer of permanent tenure.

12. (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any law relating to patni or other tenures) can be made only by a registered instrument.

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift or [usufructuary] mortgage a permanent tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and a fee (hereinafter called "the landlord's fee") of the following amount, namely:—

(a) when rent is payable in respect of the tenure, a fee of two per centum on the annual rent of the tenure: provided that no such fee shall be less than one rupee or more than one hundred rupees; and

(b) when rent is not payable in respect of the tenure, a fee of two rupees.

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the land-

lord's fee and a notice of the transfer and registration in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

The word "usufructuary" before mortgage in sub-section (2) has been inserted by Act VIII of 1886.

See notes under section 16, *post*.

Transfer of permanent tenure by sale in execution of decree other than decree for rent.

13. (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, [or when the mortgage of a permanent tenure, other than an usufructuary mortgage thereof, is foreclosed,] the Court shall, before confirming the sale under section 312 of the Code of Civil Procedure, XIV of 1882, [or making a decree or order absolute for the foreclosure,] require the purchaser [or mortgagee] to pay into Court the landlord's fee prescribed by the last foregoing section and such further fee for service of notice of the sale [or final foreclosure] on the landlord as may be prescribed.

(2) When the sale has been confirmed, [or the decree or order absolute for the foreclosure has been made,] the Court shall send to the Collector the landlord's fee and a notice of the sale [or final foreclosure] in the prescribed form, and the Collector shall cause the fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

The words in brackets have been inserted by Act VIII of 1886.

See notes under section 16, *post*.

Transfer of permanent tenure by sale in execution of decree for rent.

14. When a permanent tenure is transferred by sale in execution of a decree for arrears of rent due in respect thereof, the Court shall send to the Collector a notice of the sale in the prescribed form.

See notes under section 16, *post*.

15. When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form, and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee prescribed by section 12, and the Collector shall cause the landlord's fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.

Succession to permanent tenure.

See notes under section 16, *post*.

16. A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, distraint or other proceeding any rent payable to him as the holder of the tenure, until the Collector has received the notice and fees referred to in the last foregoing section.

Bar to recovery of rent pending notice of succession.

Sections 12 to 16 now replace section 26 of Act X of 1859 and section 27 of Act VIII of 1869. These sections provided : "All dependent talukdars and other persons possessing a permanent transferable interest in land, intermediate between the zemindar and the cultivator, are required to register, in the sherista of the zemindar or superior tenant, to whom the rents of their taluks or tenures are payable, all transfers of such taluks or tenures, or portions of them, by sale, gift or otherwise, as well as all successions thereto, and divisions among heirs in cases of inheritance. And every zemindar or superior tenant is required to admit to registry and otherwise give effect to all such transfers when made in good faith, and all such successions and divisions : Provided that no zemindar or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the zemindar or superior tenant."

The present sections have been drafted with an eye to the provisions of the Permanent Tenures Registration Bill now before the Bengal Legislative Council. They alter the system of registration and provide official registration in lieu of registration at the landlord's sherista. At the same time they enable the landlord to register such transfers and successions, without compelling him to do so. Transfers and successions will thus take effect irrespective of the will or pleasure of

the landlord. It will, however, be observed that these registrations do not give validity to what were otherwise invalid. And the landlord is not bound to accept a transfer or succession, if it is invalid. The receipt of the notice and the tender of the fee do not conclude him, and he will be just as well able to contest the validity of the transfer or succession as he was heretofore.

The landlord's fee allowed under these sections stereotypes a tax which the landlord, in most cases unwarranted by law, used to levy and extends such tax to lakhirajdars who never paid it heretofore.

The following is a summary, almost exactly in the words of the Select Committee, of the provisions contained in these five sections :—

"First, as regards voluntary transfers (section 12), it is required that every such transfer shall be registered under the ordinary law relating to the registration of documents. It is understood that the Local Government will make all arrangements requisite for facilitating the registration of such transfers. The parties applying for registration will be required to pay to the registering officer 'the landlord's fee' and a process-fee for the service of notice on the landlord. When the registration has been completed, the registering officer will forward to the Collector the landlord's fee and a notice of the transfer containing all necessary particulars, and the Collector will thereupon cause the landlord's fee to be paid to the landlord and the notice to be served upon him, at the same time taking any such steps as may be prescribed by the measure now pending before the Bengal Legislative Council for the entry of the transfer in his official register. When a transfer takes place by sale in execution of a decree (sections 13 and 14) the procedure will be substantially similar, the notice and the fee being sent to the Collector by the Court, except that when the sale takes place, in execution of a decree for arrears, no fee is to be paid to the landlord. In the only remaining case of transfer, namely, that of transfer by summary sale, the Collector will have in his own office all the information requisite for the purpose of registration. When a succession to a permanent tenure takes place, the party succeeding will be bound (section 15) to give notice to the Collector and pay to him the landlord's fee and the process-fee above referred to, and the Collector will then proceed as above described. In order to compel the person succeeding to comply with the provisions of this section, it is provided (section 16) that a person succeeding will be debarred from recovering his rent by suit, distraint or otherwise, until he has given the notice and paid the fees prescribed."

Section 12. Only by registered instrument.—This excludes both oral transfer and transfer by unregistered document. In excluding the former, this section enacts a limitation to sections 9 and 54 of the Transfer of Property Act IV of 1882 which provide that a transfer of property may be without writing, where

writing is not expressly required by any law, and that a sale of immovable property of less value than Rs. 100 may be made either by a registered document or by delivery of the property. In excluding the latter, it is a limitation to section 18 of the Registration Act III of 1877 which left, to the option of parties, the registration of instruments relating to immovable property of less value than Rs. 100. A transfer of a permanent tenure, after the passing of this Act and not made by a registered instrument, is wholly inoperative. Neither is the landlord bound to recognize the transferree nor the tenants bound to pay him rent.

Section 12.—The provisions of this section taken with those of section 65, give the landlord a complete remedy against arrears of rent due for a permanent tenure. The landlord's right to bring to sale a permanent tenure in execution of a decree for arrears against the recorded holder, and to give a good title to the purchaser

(1) depended under Reg. VII of 1799 (sec. 15) on the tenure continuing the property of the recorded holder (*Forbes* v. *Lachmiput Sing*, 17 W. R. 197, P. C.) ;

(2) did not, under Act X of 1859 (sec. 106) and Act VIII of 1869 (sec. 63), depend on the tenure so continuing, *unless* any one could show that there had been a transfer, and there was sufficient cause for its non-registration (*Syam Chand Kundu* v. *Brajanath Pal Chowdry*, 21 W. R. 94, F. B.) ;

(3) do not, under the present Act, depend on its so continuing in any case. And the unregistered transferree is not entitled to prove the transfer. It is to be noted, however, that section 12 excludes sales in execution or for arrears.

Rulings under the repealed Acts.—There is a current of decisions under the old Acts that a landlord is not bound to recognize a transferree of a permanent tenure, who has failed to register his name in the landlord's sherista. (*Sarkies* v. *Kalikumar Roy*, W. R. Sp. X. 98, *Hari Chan Bose* v. *Meherenissa Bibi*, 7. W. R. 318, *Mritunjoy Sarkar* v. *Gopal Chandra Sarkar*, 2 Beng. A. C. 131, *Sadhan Chandra Bose* v. *Guru Charan Bose*, 15 W. R. 99, *Kasinath Puni* v. *Lakhani Prasad Patnaik*, 19 W. R. 99, *Syam Chand Kundu* v. *Brajanath Pal Chowdry*, 21. W. R. 94, *Nobin Chandra Sen* v. *Nobin Chandra Chakravarti*, 22 W. R. 46, *Umacharan Chatterjee* v. *Kadambini Devi*, 3 Cal. 146, *Panye Chandra Sarkar* v. *Har Chandra Chaudhuri*, Ind. 10 Cal. 496.)

Prescribed.—The notices under sections 12, 13, 14 and 15 are to be in the *prescribed* form, and those under sections 12, 13 and 15 are to be served on the landlord in the *prescribed* manner, for which a fee of the *prescribed* amount has to be

paid. The definition of "prescribed" is "prescribed by the Local Government by notification in the official *Gazette*." The Local Government has, by such notification, prescribed the following forms of notices, mode of their service and fees for serving them. (*Calcutta Gazette* of December 23rd, 1885.)

"*Sections* 12, 13 *and* 15.—Notices under these sections shall contain, so far as may be possible, the particulars given in the forms specified in Schedule I, and shall be served on the landlord or his agent, or, where two or more persons are joint landlords, on their common agent referred to in section 188, or on their common manager appointed under section 95, as the case may be, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure. Where there is more than one landlord, and no common agent or common manager has been appointed, the notice shall be served by being posted on the landlord's village office, if any; and if there be no village office, by fixing it up in the presence of not less than two persons on some conspicuous place on the tenure, and a copy shall also be forwarded by post in a letter registered under Part III of the Indian Post Office Act to the person or persons to whom immediately preceding the transfer the rent had ordinarily been paid. When notice is served personally, the landlord's fee shall be tendered with the notice. If in cases of personal service a receipt cannot be obtained for the fee from the landlord or his agent, and in all cases, when the notice is not served personally, the fee shall be held in deposit by the Collector until applied for by the person or persons authorized to receive it." (*Local Government Rules Chapter V, Rule I.*)

SCHEDULE I (TO THE RULES).

Notice under Section 12, Act VIII of 1885.

To

THE COLLECTOR OF

LET this notice be served on A.B., resident of , as required by section 12, Act VIII of 1885. The landlord's fee of Rs. with process-fee of Rs. , is forwarded herewith.

C. D.,
Registering Officer.

To

A.B., RESIDENT OF

TAKE notice that the transfer of the tenure* specified below, of which you are alleged to be the landlord, has been registered, and that the landlord's fee of Rs. is tendered to you herewith.

* Or raiyati-holding at fixed rates.

1	2	3	4	5	6	7	8	9			10
Towji number of estate.	Name of estate.	Description of tenure transferred, with village and pergana in which situated.	Annual rent of tenure.	Name, father's name, and residence of transferror of tenure.	Name, father's name, and residence of transferree of tenure.	Nature of transfer.	Date of registration of transfer.	Amount of landlord's fee.			REMARKS.
								Rs	A.	P.	

C. D.,
Registering Officer.

Ordered that this notice be served on the abovenamed landlord.

E. F.,
Collector.

Received a copy of the abovementioned notice and rupees (Rs.), being the amount of landlord's fee specified above.

Stamp, if amount exceeds Rs. 20.

Landlord.

Notice under Section 13, Act VIII of 1885.

In the Court of the *of*

To

THE COLLECTOR OF

LET this notice be served on A.B., resident of , as required by section 13, Act VIII of 1885. The landlord's fee of Rs. with process-fee of Rs. , is forwarded herewith.

C.D., *Judge.*

To

A.B., RESIDENT OF

TAKE notice that the sale of the tenure* specified below, of which you are alleged to be the landlord, has been confirmed, and that the landlord's fee of Rs. is tendered to you herewith.

* Or raiyati-holding at fixed rates.

1	2	3	4	5	6	7	8			9
Towji number of estate.	Name of estate.	Description of tenure transferred, with village and pergana in which situated.	Number of execution case and names of parties.	Name, father's name, and residence of person whose interest in the tenure has been sold.	Name, father's name, and residence of purchaser of tenure.	Date of confirmation of sale.	Amount of landlord's fee.			REMARKS.
							Rs.	A.	P.	

C. D., *Judge.*

Ordered that this notice be served on the abovenamed landlord.

E. F.,
Collector.

Received copy of the abovementioned notice and rupees (Rs.), being the amount of landlord's fee specified above.

Stamp, if amount exceeds Rs. 20.

A. B.

Notice under Section 14, Act VIII of 1885.

In the Court of the *of*

To

THE COLLECTOR OF

IT is hereby notified to you that the tenure,* the particulars of which are entered below, was sold on the date specified below in execution of a decree for arrears of rent due in respect thereof.

* Or raiyati-holding at fixed rates.

1	2	3	4	5	6	7	8	9	10
Towji number of estate.	Name of estate.	Name of landlord of estate.	Address of landlord.	Description of tenure sold, with village or pergana in which situated.	Number of execution case, and names of parties.	Name, father's name, and residence of person whose tenure has been sold.	Name, father's name, and residence of purchaser of tenure.	Date of confirmation of sale.	REMARKS.

C. D.,
Judge.

Notice under Section 15, Act VIII of 1885.

To

THE COLLECTOR OF

BE pleased to cause this notice to be served on A.B., resident of . The landlord's fee of Rs. , with process-fee of Rs. , is deposited herewith for payment to the said A.B.

C. D.,
Tenure-holder.

To

A.B., RESIDENT OF

TAKE notice that I have succeeded to the tenure* specified below, of which you are the landlord. The landlord's fee of Rs. is tendered to you herewith.

* Or raiyati-holding at fixed rates.

1	2	3	4	5	6	7	8	9			10
Towji number of estate.	Name of estate.	Description of tenure succeeded to, with village and pergana in which situated.	Annual rent of tenure.	Name, father's name, and residence of late tenure-holder.	Date, if known, of deceased tenure-holder's death.	Name, father's name, and residence of successor to tenure.	Nature of successor's title to succeed.	Amount of landlord's fee.			REMARKS
								Rs.	A.	P.	

C. D.,
Resident of .

Ordered that this notice be served on the abovenamed A.B.

E. F.,
Collector.

Received copy of the abovementioned notice and rupees (Rs.) being the landlord's fee specified above.

Stamp, if amount exceeds Rs. 20.

A.B.

The Local Government has prescribed the following fees for the service of notices :—

"1. *Section* 189 (1).—*For Service of Notices.*—For the service of every notice under this Act, not being a notice issued by any Revenue or Civil Court (fees for serving which are regulated by the Court Fees Act), and not being provided for by any other rule made under this Act, a process-fee of 12 annas shall be levied, if the notice be directed to one or more persons residing in the same village.

"2. Where such notices are directed to several persons resident in different villages, a fee of 12 annas shall be levied for service in each village.

"3. In addition to the above fee, the actual charge which must be incurred, if it is necessary to travel by railway or boat, or cross ferries, will be levied from, and paid by, the person at whose instance the process is issued before issue of the process. If a peon carries more than one process involving charges for railway-fare, boat-hire, &c., the sum leviable will be charged in equal shares upon all the processes so carried. The rates at which such boat-hire is to be charged shall be the same as those fixed for criminal processes under Rule VII of the rules prescribed by the High Court under clause 2, section 20, Act VII of 1870, and shall be sufficient only to cover, on the whole, the actual cost of hiring boats, or of such boat establishment as it may be necessary to maintain for the purpose of serving processes of these classes.

"4. If a peon is detained at the place of service for more than 24 hours at the request of the person at whose instance the process was issued, or of his agent, such person or agent must then and there pay demurrage at the rate of 5 annas a day. Unless this demurrage is paid, the peon must decline to wait. No demurrage is to be charged if the delay was not due to the person requiring the process, or to his agent."

Transfer of, and succession to, share in permanent tenure.

17. Subject to the provisions of section 88, the foregoing sections shall apply to the transfer of, or succession to, a share in a permanent tenure.

Section 88 enacts that a division of a tenure or holding, or a distribution of the rent payable in respect thereof, shall not be binding on the landlord, unless it is made with his consent in writing. The word "*share*" must be understood to include fractional shares, as well as definite portions.

CHAPTER IV.

RAIYATS HOLDING AT FIXED RATES.

ALL the provisions of Chapter III that apply to permanent tenure-holders as tenants, except those for enhancement of rent, which can have no application, are by this Chapter of only one section made applicable to raiyats at fixed rates; with the comparatively unimportant modification that the latter shall not be ejected for breach of a condition which is inconsistent with this Act, even if such contract was made before the commencement of this Act.

It was once proposed (Bill No. I) to include these raiyats within the category of tenure-holders; but the proposal was subsequently abandoned. By this section and other provisions of the Act, the rights and liabilities of these raiyats as tenants have been made almost the same as those of permanent tenure-holders, except the liability to distraint. By calling them tenure-holders, the tenants under them would have been elevated to the class of raiyats, and enjoyed all the rights and privileges of that class. But by calling them raiyats, as they have been done, the tenants become under-raiyats with scarcely any rights worth the name.

Incidents of holding at fixed rates.

18. A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

(*a*) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and

(*b*) shall not be ejected by his landlord except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

Rent or rate of rent fixed in perpetuity.—The meaning of these words has given rise to much difference of opinion. The questions that have been asked in relation to them are—(1) do they include rent in kind at all? and (2) if they do, do they include only rent in kind that is fixed in *amount*, e. g., as so many maunds of paddy, or as so many maunds of paddy per bigha? or do they further include rent in kind that is only fixed as regards the *proportion* of gross produce of the land, *e.g.*, half, or one-third, or one-fourth of such produce. These words occur again in this Act in

section 50 in connection with the rules and presumptions as to the fixity of rent. The following are the rulings under the repealed Acts in connection with such rules and presumptions. By the term "fixed rates of rent," remarked Peacock, C. J., "is meant *not merely* fixed and definite sums payable as rent, *but also* rates regulated by certain fixed principles. Such, for instance, as a certain proportion of the gross or of the net produce of every bigha, or such a sum of money as would give to the raiyat any fixed rate of profit after payment of all the expenses of cultivation. *Id certum est, quod certum reddi potest.*" (*Thakurani Dasi* v. *Bisvesvar Mukerjee*, Beng. F. B. 326, 3 W. R. X. 108.) But in *Mahamad Yacoob Hossien* v. *Chowdry Wahed Ali*, 4. W. R. X. 23, Trevor and E. Jackson, JJ., *held* "that no rate of *bhaoli* rent varying yearly in amount with the varying amount of gross produce of the land, though fixed as to the proportion which it is to bear to such produce, is a fixed unchangeable rent of the nature alluded to in section 4 of Act X of 1859. Moreover, it appears to me, that all rents in kind are transitory, existing only so long as money-rents, which it is the policy of the law to favor, can be introduced, and that it is only when the amount of rent or the portion of the gross produce payable by the tenant has been paid in money that section 4 of Act X becomes applicable." Bayley, J., dissenting, *held* that "a contract to pay half in kind does not involve a varying rate. It is a fixed rate of half of what may be produced in kind. As to the contract, it is a fixed one as much as if it were to pay half of Rs. 100 or any other sum." The decision of Trevor and E. Jackson, JJ., was followed in *Thakur Prasad Das* v. *Syad Mahamad Baker*, 8 W. R. 170. It was, however, *disapproved* in *Ram Dayal Sing* v. *Lachmi Narain*, 6 Beng. App. 25, 14 W. R. 388. L. S. Jackson, J., observed—"In 4 W. R. X. 23 and 8 W. R. 170, the learned Judges appear to have held that payment for a number of years at one uniform *bhaoli* rate would not be a payment at an unchanged rate, such as would protect a raiyat under the provisions of section 3, Act X of 1859. Now, if it were necessary for us to decide the case on this question, I confess I would have considerable difficulty in assenting to the rulings in these cases; because, if the rulings are correct, the Legislature must have intended that raiyats who have held land upon one principle, *i. e.* to say, upon one fixed ratio of division of the produce of their land with the landlord, from the time of the Permanent Settlement, would be entitled to no protection whatever, but would, after these 80 or 90 years, be subject to a suit for enhancement or for commutation of their rent at such money rates as the landlord might be enabled to prove. I cannot believe that the Legislature could have intended any such injustice to raiyats in those parts of the country where the *bhaoli* system prevails, as it is in many parts of Behar. In those parts of the country there being no such thing as a rate of rent in money, raiyats holding from the time of the Permanent

Settlement would have no protection whatever, unless the Legislature meant to include under the words 'rate of rent,' the mode or principle of *bhaoli* payment. But it is not necessary for us to determine the case upon this point; if it had been so, I should have been inclined to propose a reference to a Full Bench." In *Jatto Moar* v. *Basmati Kooer*, 15 W. R. 479, Mukerjee, J., observed: "I am not prepared to hold that a raiyat, who has, since the Permanent Settlement, paid a certain fixed proportion of the produce of the land to the zemindar, cannot say that his tenure is a holding in perpetuity at a fixed rent," and Macpherson, J., remarked that holdings "at a fixed proportion of crops * * * may be said to be holdings with right of occupancy at a fixed rate." A Full Bench of the Allahabad High Court has *held* overruling an earlier case of *Hanuman Prasad* v. *Ram Jug Sing* which followed the Calcutta case of *Yacoob Hossein* v. *Wahed Ali*, 4 W. R. X. 23, that a rent in kind (*bhaoli*), which, though it varies yearly in amount of the yearly produce, is fixed as to the proportion it is to bear to such produce, is a fixed rent within the meaning of section 3 of Act X of 1859. It was observed—"The quantity of produce delivered may vary in each year, but the *rate* or share remains the same, be it a fourth, a third or a half, as the case may be. The *rate* of rent does not vary, although its *quantum* or value may." Further, per Pearson, J., "whether or not the Legislature when enacting these sections had in view a rent paid in the shape of a proportion of the produce, it is impossible to hold that the terms used will not include such a rent as well as money-rent." (*Hanuman Prasad* v. *Kaulesvar Pandey*, Ind. 1 All. 301.)

The authorities thus seem to be more in favor than otherwise of including rent in kind, both fixed in amount and fixed in proportion, within "fixed rents" of the repealed Acts. The word "rent" has been defined in this Act, and means "whatever is lawfully payable or deliverable in money or kind." Rent in kind is therefore included in the words "rent or rate of rent fixed in perpetuity." In fact, "rent in perpetuity" would include rent in money fixed in perpetuity as well as rent in kind fixed in perpetuity. And the words "*rate* of rent fixed in perpetuity" are sufficiently wide to include rate of rent in kind fixed in amount as well as fixed in proportion to the gross produce.

But it has been argued—"Section 50, *post*, had another sub-section, which ran as follows:—'When a raiyat has paid as rent a fixed share or the value of a fixed share of the produce of the land, the rent or rate of rent shall not be deemed to have changed within the meaning of the section, merely by reason of the amount paid having varied from year to year, or by reason of the rent having been commuted with the consent of both the landlord and the raiyat to a fixed money-rent.' This sub-section was omitted; and the reason of the omission, as explained in Coun-

cil, was : 'The first alteration to be noticed is that we have omitted the provision, making the presumption applicable to produce-rents. It seemed clear to us that where the rent is paid in kind, although the proportion of the gross produce paid remains the same, yet by a self-acting machinery, this fact discounts the rise in prices, and the rents are thus of necessity enhanced or reduced, as prices rise or fall.' Hence, produce rents, at least, such of them as are only fixed in respect to the proportion of gross produce, are not within the purview of section 18 or section 50 of the Act."

It is submitted, that the argument is not sound. What the Legislature omitted, and the reason they gave for the omission, cannot be looked into in finding out the meaning of the words that are in the Act. If there is nothing repugnant in the subject or context, the word *rent* must be understood, according to the definition, to include rent in kind. Thus produce-rent fixed in amount for the whole holding or fixed in amount as per bigha, clearly falls within the purview of sections 18 and 50. Whether produce-rent fixed in proportion to the gross produce falls within the purview of these sections depends on the meaning attached to the word "fixed." If the maxim '*Id certum est, quod certum reddi potest*' be followed, and it is submitted that there is no sufficient reason not to follow the maxim, produce-rents fixed in proportion to the gross produce, will fall within the scope of these sections. If the sub-section that was omitted were allowed to remain, there would have been no difficulty; but even without it, the provisions of the Act are sufficient to include the cases that were specially provided for by it. The intention of the Legislature might have been different, but, when they allowed the definition of rent to remain what it is, and did not restrict the meaning of the word "fixed," it is submitted that their intention has not been accomplished by the provisions of the Act.

It may be noted that a fixed quantity of rent in kind, by a self-acting machinery, discounts the rise in prices much more effectually than a fixed proportion of gross produce. For, price rises, under economic rules, when produce is less and *vice versâ*. Hence, a fixed proportion of gross produce represents, comparatively, a more uniform money-rent than a fixed amount of produce. And if raiyats paying a fixed quantity of produce be included among raiyats at fixed rates, equitably, raiyats paying a fixed proportion of produce have a greater right to be so included.

Raiyats at fixed rates.—Raiyats at fixed rates include (1) raiyats who are by status entitled to hold at fixed rates (secs. 3 and 4 of Act X of 1859, secs. 3 and 4 of Act VIII of 1869, and sec. 50 of this Act); and (2) raiyats who are by contract entitled to hold at fixed rates.

In the case of class (1) of these raiyats, status is everything, and the raiyats must have held at unvarying rates from the time of the Permanent Settlement. They are, therefore, settled raiyats of the village within the meaning of section 20, *post*; and they acquire at once the right of occupancy in all lands let to them (section 21). They have also occupancy-right in their holdings at fixed rates, and they may apply for commutation of rent under section 40, if they pay in kind ; and the commuted money-rent shall be a fixed one.

In the case of class (2) of these raiyats, status is nothing and contract everything. They might have acquired the holding the day before, and might not have been raiyats at all ; but as soon as they get a lease at a fixed rent or rate of rent, they acquire all the rights and privileges mentioned in this section. But they do not acquire *per se*, i.e., if not otherwise entitled, the rights under sections 20, 21 and 40, *post*.

The same provisions with respect to succession and transfer.—These provisions are contained in sections 11 to 17 of the last Chapter. Holdings at fixed rates are thus made, *ipso facto*, inheritable and transferable. It is to be noted, however, that section 11 speaks of permanent tenures "being transferred" and "being bequeathed" ; but not of "being inherited." It was not necessary in connection with such tenures, to speak of inheritance ; because, no tenure is permanent under this Act which is not inheritable. There is thus no express provision for the intestate succession of holdings at fixed rates. But the intention of the Legislature is perfectly clear. Occupancy-holdings have been expressly made heritable (sec. 26, *post*) ; and the interest in holdings at fixed rates, is treated in this Act as a higher interest. Then again, property to be capable of being bequeathed must be heritable. The provision for bequeathing, therefore, includes that for inheritance.

By the extension of sections 11 to 17 to raiyats at fixed rates, they are made liable to register all voluntary transfers and notify all successions ; and they have to pay the landlord's fee. This last is an imposition of a tax which they were never before liable to pay, though it was often illegally levied on them.

See notes to sections 11 to 17.

Ejectment.—The difference of the provisions of this section and those of section 10, is to be noted. A raiyat at fixed rate shall not be ejected now, except for breach of a condition carrying forfeiture ; nor shall he be ejected for breach of such condition if it is inconsistent with this Act, notwithstanding that the contract was made before the commencement of this Act. He cannot, for example, be now ejected for arrears of rent under any circumstances.

See notes under section 10.

It is, moreover, to be noted that a raiyat at fixed rate is not liable now to be ejected for using his land in a manner which renders it unfit for the purposes of the tenancy, unless such a condition of forfeiture is reserved in the contract. (Compare sections 23 and 25, *post.*) He may therefore divert the purpose of his holding without any interference of the landlord. If a Guzastadar be a raiyat at fixed rate, this section (18) sets aside the ruling in *Lall Sahoo* v. *Deo Narain Sing*, Ind. 3 Cal. 781, 2 Cal. 295, which seems to lay down that a Guzastadar cannot change the mode of enjoyment of land.

It has been asked what is the remedy of a landlord in a case like the following :— Suppose a raiyat with a small piece of land at fixed rent, finding that it would be profitable to convert it into a brick-field, accordingly does so, and makes his profit in a lump sum. If he then throws up the holding, the land, having been rendered totally unfit for the purposes of agriculture, would be useless in the hands of the landlord, who thus loses his rent for ever.

The landlord has, in such a case, the same remedy which he has, if the tenant were a permanent tenure-holder instead of being a raiyat at fixed rate. If a permanent tenure-holder or a raiyat at fixed rate commits destructive waste or spoliation of a nature that the land so wasted is made incapable of bearing the rent payable for it, the landlord has the right to sue for injunction, restraining waste, and directing the tenant to restore the land to its original condition ; and he is entitled to have such an injunction. Such a suit, however, must be brought at the earliest opportunity. But if the landlord sleeps over his right, no injunction will issue, and the landlord is left to the sole remedy of suing for damages.

Guzasta and Gorabandi holdings.—Guzasta holdings were the subject of rulings in *Jatto Moer* v. *Basmati Kooer*, 15 W. R. 479 ; *Tetra Kooer* v. *Bhanjan Roy*, 21 W. R. 268 ; and *Lal Sahoo* v. *Deo Narain Sing*, Ind. 3 Cal. 781, 2 Cal. 295. But none of these decisions turned on the finding whether the rent of such holdings was fixed or variable. In the first, there is a dictum that the rent may or may not be fixed, in the second, that the rent is fixed, while the third is indistinct. The Patna Conference held for eliciting opinion of the District Officers on the Tenancy Bill, state that Guzastadars hold at fixed rates. (Ind. Gaz. Supp., Oct. 11, 1884, p. 227.) *Goda or Gorabandi* holdings were similarly the subject of decisions, but in none of them the fixity of rent was at issue (*Raja Leelanand Sing* v. *Nirput Mahtoon*, 17 W. R. 306 ; *Buti Sing* v. *Murat Sing*, 13 Beng. 284, note, 20 W. R. 478 ; *Mohant Chaturbhuj Bharti* v. *Janki Prasad Sing*, 4 Cal. 298). The Bhagulpore Conference observed : " Without offering any opinion as to the exact original meaning of the term *Gorabandi*, we are satisfied that it now is used and understood by the raiyats to mean raiyati-holding at fixed rates." (Ind. Gaz. *Ibid.*, p. 248.)

Whether *Guzasta* and *Gorabandi* holdings are holdings at fixed rates, has yet to be decided by the Courts. If they are so by custom, usage or customary right, their incidents are saved by section 183, *post*.

CHAPTER V.

OCCUPANCY-RAIYATS.

THIS is one of the most important Chapters of the Act. It was in reference to the raiyats that the necessity of recasting the whole Tenancy Law was considered urgent. The intention of the original Bill, which was introduced in the India Council, was to secure to the occupancy-raiyats the three F's: fixity of tenure, fair rent, and free sale. But the provisions regarding these rights were so extenuated by the Select Committee, that one of their members remarked: "Fixity of tenure has been weakened by the limitation of the settled raiyat to the village alone; fair rent has been deprived of the safeguard (the only ultimate safeguard) of a maximum limit beyond which rent can never be enhanced; and free sale has disappeared altogether."

However, still it is in this Chapter, that the largest *number* of alterations in the old law has been made. These alterations were thus summarized (Bayley's speech in Council):

The position of the occupancy-raiyat under the repealed Acts, was:— (1) He had a great difficulty in making good his title to occupancy-rights. He was required to prove that he had held every particular field of his holding for twelve consecutive years, and, in the absence of trustworthy village records, the proof was often impossible. He and his forefathers might have resided in the village for generations, but evidence of this was entirely immaterial to the issue. He might be able to show that he had held *some* land in the village in every year of the last twelve, but if the fields had been changed, his claims to the occupancy-right could not be maintained (sec. 6). (2) The law, not content with making the proof of occupancy-rights very difficult to the raiyat, allowed him to contract himself out of them (sec. 7); and these engagements, entered into without understanding and forced on the raiyat without adequate consideration, were rapidly becoming a common form. (3) The law gave the occupancy-raiyat no protection from incessant enhancement. It enumerated, it is true, the grounds on which enhancement might be sought, but it did not prescribe the term for which a rent, after enhancement, was to hold good, and it did not prevent a landlord from instituting annual enhancement suits, or from annually serving the raiyat with a demand for an

enhanced rent (sec. 17 of Act VIII, sec. 16 of Act X). (4) The law did not define the raiyat's right to make improvements, even of the most ordinary and necessary character, nor did it determine his rights in them in the event of his being ejected. (5) The law made every instalment, an arrear of rent, that was not paid on the exact date fixed in the raiyat's engagement or by custom, and allowed a landlord to institute a separate suit for each instalment in arrear. As the custom of monthly instalments is common, the harassment which a landlord might thus inflict on his raiyat was intolerable (sec. 21 of Act VIII, sec. 20 of Act X). (6) The law made the raiyat liable to ejectment in execution of a decree for an arrear of rent, even though the sale of his occupancy-right, by auction, would more than satisfy the debt. Thus he lost, and the landlord acquired, not only the value of his interest in the land, but also of any improvements he might have made, or of any crops which might be still on the grounds (sec. 22 of Act VIII, sec. 21 of Act X). (7) The law of distraint was such that, under cover of it, the landlord was able, if disposed, to exercise a ruinous interference with the raiyat's disposition of his crops and reduce him to beggary (sec. 68 of Act VIII, sec. 112 of Act X).

To turn to the provisions of this Act. (1) The Act, by returning to the old principle of the khudkhast raiyat, gives him his occupancy-right, not only in the actual lands held for twelve years, but in *any* land held by him in the village; and it meets the great blot of the old law by facilitating his proof of these rights (sec. 21). He has merely to show that he has held *some* land continuously within the village boundaries for twelve years, and he becomes a settled raiyat of his village (sec. 20). It is presumed in his favor, in the absence of proof to the contrary, that he is an occupancy-raiyat of the land which he is found to be holding (sec. 20, sub-sec. 7). (2) The Act prevents the occupancy-raiyat from contracting himself out of his status (sec. 178). (3) The Act puts a check on incessant enhancements. Whether the raiyat's rent be determined by a Court or by private agreement, in either case it shall not be enhanced for fifteen years (sec. 37). The Act also puts a strict limit to the amount of enhancement by agreement (sec. 29). (4) The Act secures to the occupancy-raiyat power to make improvements, and enables him to recover his outlay in case of eviction (Chap. X). (5) In the matter of rent instalments, the Act, while leaving the number and dates of instalments to agreement or local usage, provides that an interval of not less than three months shall intervene between the institution of the successive suits for arrears of rent (sec. 147). (6) The Act abolishes ejectment in execution of a decree for an arrear of rent against an occupancy-raiyat and requires the decree-holder to bring the tenancy to sale (sec. 65). (7) The Act weakens the power of the landlord to use the process

of distraint for purposes of simple oppression, though it remains as an instrument for the recovery of arrears (Chap. XII).

Against all these advantages, enumerated by the member in charge of the Bill, must be set the great disadvantage that the rent of the occupancy-raiyat is, by this Act, changed from a practically fixed rent to an easily enhanceable one. From the difficulty of proving service of notice, from the defect of such notice, and from the difficulty of proving the prevailing rate or the increase of the value of the actual produce of the land, the landlord had only a nominal right of enhancement under the old law. But under the rule, in the present Act, of enhancement of rent for increase of prices of staple food-crops, irrespective of the actual crop grown in the land, enhancement is easily obtainable. Thus, while the occupancy-right may now be more easily acquired and proved, its real value has very considerably been reduced.

General.

Continuance of existing occupancy-rights.

19. Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land shall, when this Act comes into force, have a right of occupancy in that land.

This is new.

This section expressly saves the existing occupancy-right of the raiyats. The omission of such an express provision in Act X of 1859 and Act VIII B. C. of 1869 led it to be believed, popularly, though ignorantly, that there could be no occupancy-right except under those statutes (R. C. II, 389).

By the operation of any enactment.—These enactments are Act X of 1859 and Act VIII B. C. of 1869. Sections 6 and 7 of these two Acts were almost exactly the same, and provided :—

Sec. 6.—"Every ryot who shall have [has, *Act X*] cultivated or held land for a period of twelve years shall have [has, *Act X*] a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same ; but this rule does not apply to *khamar*, *nij-jote* or *seer* land belonging to the proprietor of the estate or tenure and let by him on lease for a term, or year by year, nor (as respects the actual cultivator) to land sublet for a term, or year by year, by a ryot having a

right of occupancy. The holding of the father or other person from whom a ryot inherits shall be deemed to be the holding of the ryot within the meaning of this section."

Sec. 7.—"Nothing in the last preceding section shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a ryot, when it contains an express stipulation contrary thereto."

Rulings under Section 6 of the repealed Acts.—A—*Land.*—In the note on "land" under section 5, *ante*, of this Act, it was seen that *land* in section 6 of Acts X and VIII was judicially interpreted to mean cultural land including (1) bastu land forming a part of the raiyat's holding, on which his house was built, and (2) grazing land, if the raiyat was a breeder; but *not* to mean (1) land for building or other purposes not cultural, (2) jalkar, (3) tank for storing fish, or (4) land under jalkar.

B.—*Every raiyat.*—Raiyat was interpreted to include (1) a person holding land as a *bhagdhari*, i.e., upon a rent consisting of a portion of the produce (*Harihar Mukerjee* v. *Biresvar Banerjee*, 6 W. R. X. 17; *Jutto Moar* v. *Basmati Kooer*, 15 W. R. 479); and (2) a tenant holding a *nuksun* jote (*utbandi*), when by custom rent is paid only when land is cultivated (*Premanand Ghosh* v. *Surendra Nath Ray*, 20 W. R. 329).

C.—*Raiyat who has cultivated or held.*—These words indicated that in order to acquire the occupancy-right, the land must be held or cultivated *as a raiyat.* Such a right, therefore, was not acquired—

(*a*) by holding secretly (*Garib Mandal* v. *Bhuban Mohan Sen*, 2 W. R. X. 85);

(*b*) nor by holding fraudulently (*Bhubanjay Acharjee* v. *Ram Narain Chowdry*, 9 W. R. 449);

(*c*) nor by holding as a servant (*Umamayi Barmani* v. *Bokoo Behara*, 13 W. R. 333);

(*d*) nor by holding as a *ticcadar* availing of the opportunity of his *ticca* lease (*Umanath Tewari* v. *Koondun Tewari*, 19 W. R. 177);

(*e*) nor by holding as an *ijaradar*, or farmer of land (*Gilmore* v. *Srimant Bhoumik*, W. R. Sp. X. 77; *Savi* v. *Panchanon Roy*, 25 W. R. 503; *Ram Sarun Sahoo* v. *Veryag Mahtoon*, 25 W. R. 554; *Raikamal Dasi* v. *Laidley*, Ind. 4 Cal. 957);

but a right of occupancy once acquired as a raiyat was not lost by subsequently taking the same land in ijara (*Watson & Co.* v. *Jogendra Narain Roy*, 1 W. R. 76);

(*f*) nor by a trespasser (*Sheikh Pirbaksh* v. *Sheikh Miajan*, W. R. F. B. 146; *Golam Hyder* v. *Purna Chandra Ray*, 3 W. R. X. 147; *Isan Chandra Ghosh* v. *Haris Chandra Banerjee*, 10 Beng. App. 5, 18 W. R. 19);

but if land was held as a raiyat, though the rent was paid to a person who had no title, the right of occupancy was acquired (*Syad Amir Hossein* v. *Sheo Shahai*, 19 W. R. 338; *Zulfun Bibi* v. *Radhika Prasanna Chandra*, Ind. 3 Cal. 560, 3 Cal. 383); or, if it was so held, even if no rent was paid for some years (*Narain Roy* v. *Opnit Misser*, Ind. 9 Cal. 305, 11 Cal. 417; *Musyatulla* v. *Noor Jehan*, Ind. 9 Cal. 808, 12 Cal. 389); or, if land was held under a letting by one of several joint co-owners (*Muktakesi Dasi* v. *Kailas Chunder Mitter*, 7 W. R. 493);

but if land was *not held*, on account of submersion or abandonment or dispossession, and no rent paid for it, the occupancy-right was neither acquired nor continued (*Hemnath Dutt* v. *Ashgar Sindur*, Ind. 4 Cal. 894; *Golam Ali* v. *Golap Sundari Debi*, Ind. 8 Cal. 612; *Hem Chandra Chowdry* v. *Chand Akand*, Ind. 12 Cal. 115);

(*g*) nor by a person who claimed to hold as a jagirdar (*Bisvanath Roy* v. *Bhairub Sing*, 7. W. R. 145);

(*h*) nor by a person who claimed to hold hostilely (*Mirza Nadir Beg* v. *Muduram*, 2 W. R. X. 2; *Debi Misra* v. *Mungar Mia*, 2 Cal. 208; *Satya Bhama Dasi* v. *Krishnachandra Chatterjee*, Ind. 6 Cal. 55; *Isan Chandra Chatterjee* v. *Shama Charan Dutt*, Ind. 10 Cal. 41; *Mozoharuddin* v. *Gobind Chandra Nandi*, Ind. 6 Cal. 436).

D—*Held land.*—A person held land within the meaning of section 6, when the cultivation thereof was carried on at his risk, on his behalf, by the members of his family, by servants or by hired labourers (*Ram Mangal Ghosh* v. *Lakhinarain Shaha*, 1 W. R. 71; *Kalicharan Sing* v. *Amiruddin*, 9 W. R. 579). So also, when a firm owning an indigo concern and carrying on the manufacture of indigo and having a cultivating lease, the cultivation was carried on by the servants of the firm or by sub-tenants (*Laidley* v. *Gour Gobind Sarkar*, Ind. 11 Cal. 501).

E—*Held under a pottah or not.*—A raiyat holding land for more than twelve years under several leases or pottahs, each for a term of years, acquired a right of occupancy, unless there was an express stipulation to the contrary (*Pundit Sheoprasad Sing* v. *Ram Sahay Sing*, 8 Beng. 165, 17 W. R. 62).

F—*This rule does not apply to khamar, nij-jote or seer land let on lease for a term, or year by year.*—A raiyat cultivating khamar or nij-jote land belonging to the proprietor of an estate, acquired no right of occupancy if the land was leased to him for a term, or from year to year; though he acquired a right of occupancy if he did not hold under leases for terms, or under leases from year to year, but held under a perpetual or indefinite lease, or held without any lease (*Gourhari Sing* v. *Behari Rahut*, 3 Beng. App. 138, 12 W. R. 278, *Bhagavan Bhagut* v. *Jagomohan Roy*, 20 W. R. 308; *Sheikh Ashraf* v. *Ram Kisore Ghosh*, 23 W. R. 288).

G—*Nor to lands sublet for a term, or year by year.*—There are some decisions which seem to lay down the broad rule that an under-raiyat never acquired an occupancy-right under this section; but the facts of those cases as reported are meagre. On the other hand, in *Ramdhan Khan* v. *Haradhan Paramanik*, 12 W. R. 404, it was held that section 6 did not exclude from the acquisition of the right of occupancy those persons who held under raiyats, but only such as held from raiyats who themselves had no more than a mere right of occupancy. Further, the case of a raiyat holding *nij-jote* land under a proprietor was on all fours with that of an under-raiyat holding under a raiyat, and the two cases in 12 W. R. 278 and 23 W. R. 288 are direct authority that the occupancy-right was acquired in *nij-jote* lands when the raiyat did not hold under a lease for a term, or year to year. It would thus appear that the better opinion was, that under-raiyats acquired the right of occupancy, if they held under raiyats who had more than mere rights of occupancy, or, if they held under occupancy-raiyats otherwise than for a term, or year by year.

H—*Father or other person from whom a raiyat inherits.*—It is only the holding of a person from whom the lands were had by inheritance that could be counted to make up the period of twelve years. The occupation of a predecessor in title, or a vendor, could not be so counted (*Watson* v. *Sarat Sundari Devi*, 7 W. R. 395; *Narendra Narain Roy* v. *Isan Chandra Sen*, 22 W. R. 22, 13 Beng. 274; *Lal Bahadur Sing* v. *Solano*, Ind. 10 Cal. 45): even if the landlord consented to the transfer (*Tara Prasad Roy* v. *Surju Kant Acharjee Chowdry*, 15 W. R. 153; *Hyder Baksh* v. *Bhubendra Deb Kunwar*, 17 W. R. 179, 13 Beng. 276; note). The occupation of a joint raiyat could not also be counted: (*Sheikh Mahamad Chaman* v. *Ramprasad Bhagat*, 8 Beng. 338.) An exception to this last rule was made in *Forbes* v. *Ramlal Bisvas*, 22 W. R. 51, where it was observed that if the right was in its inception joint with other persons, but if, by the death of the co-sharers, it became a sole right in the plaintiff himself, still it would be continuous throughout in its nature. Now *see* section 20, sub-section (4).

Occupancy-right of under-raiyats not saved.—It will be seen that this section (sec. 19) saves the existing occupancy-rights of the *raiyats* alone, and not those of the under-raiyats. There are no provisions in this Act about under-raiyats with

rights of occupancy. Their rights are governed by custom and usage (sec. 183). *See* notes in Chapter VII.

By custom.—The saving of customary and other existing occupancy-rights, that were not the creations of the repealed statutes, is in accordance with the existing case-law. "If there are any ancient or hereditary rights to which the raiyat is entitled, he is not precluded by Act X of 1859 from proving and claiming it in due course of law." (Peacock, C. J., in *Hills* v. *Iswar Ghose*, W. R. F. B. 156.) Act X of 1859 "did not take away the right" which a raiyat had "by grant, contract, prescription or other valid title." (Peacock, C. J., in *Thakurani Dasi* v. *Bisweswar Mukerjee*, Beng. F. B. 326.) "I do not understand that Act X of 1859 put an end to any description of rights; it certainly conferred certain rights upon some classes of tenants; but that the rights of khudkhast raiyats were in any way destroyed under Act X of 1859, I am not prepared to say." (Jackson, J., in *Raja Leelanand Sing* v. *Nirpat Mahtoon*, 17 W. R. 308.)

Or otherwise.—This includes grants, purchase and other modes of acquiring the occupancy-right besides those under statute or custom. It was once proposed (Bill No. I, sec. 48) to provide expressly for the acquisition of the occupancy-right by grant. But the proposal was afterwards abandoned; and the Act now provides for the acquisition of the occupancy-right as an incident of the *status* of the settled raiyat. There is nothing, however, in existing law to make a grant of an occupancy-right invalid. Some remarks (*e. g.*, at 15 W. R. 153, and Ind. 3 Cal. 563) have been, in some quarters, erroneously considered to rule that such a grant may not be made. But the remarks really have reference only to the acquisition of the right under the statute. This section saves existing occupancy-rights by grant, wherever they might have been granted and makes the provisions of this Chapter applicable to them. So also it saves the rights of those persons who have acquired occupancy-rights by purchase or gift.

Definition of "settled raiyat."

20. (1) Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

This is new.

Settled raiyat.—This term now takes the place of the term khudkhast raiyat. The meaning of the latter term and the incidents of the khudkhast holding gave rise to considerable difference of opinion. All such difference is now

set at rest, for the purposes of the Tenancy law, by the provisions of this sub-section.

The acquisition of the status of the settled raiyat depends, *not* on holding the one and the same plot of land, but on holding *any* land of the same village for a period of twelve continuous years, whether before or after the passing of this Act, either by the raiyat himself or by a person whose heir he is. The condition is, that the land should be held *as a raiyat* for that period. It was once proposed to extend the sphere of the settled raiyat to all lands in the same "estate." But the proposal, though sanctioned by the Secretary of State for India, was abandoned after much discussion.

As a raiyat.—These words mean a good deal. In the first place, they connote all that has been gathered of case-law in note, "*raiyat who has held or cultivated*," under the preceding section, *i. e.*, they do not include a person who holds secretly or fraudulently, or hostilely, or as a trespasser, &c.; nor who is not a raiyat but a proprietor or a tenure-holder or an under-raiyat under this Act (sec. 5, sub-sec. 3). In the next place, these words connote the purpose for which a raiyat can acquire a holding (sec. 5, sub-sec. 2); they do not include persons who have held land but for purposes of cultivation or of grazing cattle or gathering the produce of the land, or for purposes incidental thereto, including construction of wells, tanks and water-channels, or erection of dwelling-houses or out-houses (sec. 76). But if land is acquired for the purpose of cultivation, the lessee does not cease to hold as a raiyat by using the land for purposes other than what are allowed by this Act. (*See* note under sec. 5 headed "land.")

Wholly or partly before or after the commencement of this Act.—This section is, thus, expressly retrospective in operation. Section 6 of Act X of 1859 and section 6 of Act VIII of 1869 were also judicially held to be retrospective, though there were no express words in those sections. (*Thakurani Dasi* v. *Bisheswar Mukherjee*, Beng. F. B. 202.)

Village.—Village means the area included as such in the Revenue Survey maps; and, where no such map has been prepared, the area as determined by the officer appointed by the Local Government in that behalf (sec. 3, cl. 11). Revenue Survey maps have been prepared for nearly the whole of the Lower Provinces. But village boundaries, as given in these maps, do not always agree with the boundaries according to possession. In such cases, for the purposes of this section, the Survey-map-boundaries will prevail.

Continuously held.—It was remarked in *Mahamed Gazi Chowdry* v. *Noor Mahamad*, 24 W. R. 324, that if a raiyat was wrongfully evicted that would not be an interruption of the raiyat's possession.

Whether under lease or otherwise.—Reading this section with section 21, it is to be noted that the raiyat may not by lease contract himself out of the provisions of this section (sec. 178, *post*).

(2) A person shall be deemed for the purposes of this section to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

This is new.

This sub-section has been introduced to prevent the landlord's thwarting the acquisition of the status of the settled raiyat by shifting the raiyat from one plot to another. To prevent the acquisition of the status, the landlord has now to turn the raiyat out of the village altogether, a step, which the Legislature thought, would not be profitable. The raiyat will certainly find it much easier to prove that he held *some* land in the village for twelve years than that he held the *same* land for that period.

Land.—All that is necessary for the acquisition of the status of the settled raiyat is that the lands, same or different, held during the twelve years, should be included within the external boundaries of the village area. It is no matter whatever that the landlords are different; except that any of such landlords must not be a raiyat, for then the tenant will hold not as a raiyat but only as an under-raiyat. "The khudkhast raiyat's rights are independent of those of the rent-receiver, and it matters not into how many estates the village may be divided. The raiyat is a khudkhast raiyat *of that village*." (Bayley's speech in Council.)

It is again no matter whether the land is *khamar* or *nij-jote*, *utbandi* or *chur*. Though occupancy-right may not be acquired in these exceptional lands, except under the conditions laid down in sections 116 and 180, *post*, yet the occupation of such lands for twelve continuous years tends, all the same, to the acquisition of the status of the settled raiyat; and as soon as a raiyat, after twelve years' occupation of lands of these exceptional character, is let land not so excepted, he at once acquires the right of occupancy in it under the provisions of the next section.

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

This is new.

This sub-section makes the status of a settled raiyat inheritable even in an inchoate condition; just as section 6 of Acts X of 1859 and VIII B.C. of 1869 made the status of an occupancy-raiyat inheritable even in an inchoate state. *See* note

headed "*Father and other person*," *&c.*, under the preceding section. Like the inchoate right of occupancy, the inchoate status of a settled raiyat is not transferable. When the status is complete, the raiyat acquires the right of occupancy as an incident of his status, and though he may transfer the *occupancy-right*, he may not by transfer confer the *status* of a settled raiyat on the transferree. It is important to bear this point in mind. For a person purchasing an occupancy-holding of a settled raiyat, acquires occupancy-right only in that holding; but he does not at once acquire occupancy-right in any other land let to him, unless or until he had himself acquired the status of the settled raiyat.

(4) Land held by two or more co-sharers as a raiyati-holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

This is new.

Thus, when two or more persons have held lands in the village jointly, or partly jointly and partly severally, each of them acquires the status of the settled raiyat, and acquires the right of occupancy in any land let to him separately. This sub-section follows the *ratio decidendi* in *Forbes* v. *Ramlal Biswas*, 22 W. R. 51, as opposed to that in *Sheikh Mahamad Chamun* v. *Ramprasad Bhagat*, 8 Beng. 338, 22 W. R. 52, note.

(5) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village and for one year thereafter.

This is new.

Thus a settled raiyat, who has surrendered or relinquished all the lands in the village, retains the capability of at once acquiring the right of occupancy in lands that may be let to him within one year of such surrender or relinquishment; but in lands let to him after one year, he does not at once acquire the right of occupancy.

It is, however, when he has surrendered or abandoned *all* the lands in the village that his status is gone. If he retains any land whatever in the village, his status is preserved. Such land may or may not be used for the purpose of cultivation or other purposes allowed by this Act. All that is necessary is, that the land retained was originally acquired for such a purpose. Thus, to take a likely example, if the land was originally acquired for the purpose of cultivation and the raiyat built a house in a part of the land and afterwards relinquished the remainder, his status is not extinguished. For he continues to hold the land as a raiyat. Such a person, therefore, would acquire at once the right of occupancy in any land of the village let to him after as long a time as may be. Or, to take an extreme case, if

the raiyat built a school in a part, and relinquished the remainder, he still retains his status. At first sight this would seem very hard on the landlord. But it is not really so. For the landlord had the remedy in his own hands. He might not have allowed the raiyat to divert the use of the land to such a purpose and might have ejected or restrained the raiyat.

(6) If a raiyat recovers possession of land under section 87, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession more than a year.

This is new.

Section 87, *post*, provides for the recovery by a raiyat of land on which the landlord has entered on account of his having abandoned his residence without notice and ceasing to cultivate the land by himself or by some other person, if he brings a suit for such purpose within two years. This sub-section adopts the principle of the *dictum* in *Mahamad Gazi Chowdry* v. *Noor Mahamad*, 24 W. R. 324, that wrongful eviction is no interruption of the raiyat's possession.

(7) If, in any proceeding under this Act, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

This is new.

The reason of this presumption was thus explained in Council: "Whatever might have been the effect of Act X of 1859 as to the legal acquisition of occupancy-rights, it was, in practice, exceedingly difficult to prove those rights. The proportion of persons having acquired occupancy-rights was estimated at 70 to 90 per cent. of all the raiyats in the country, but unfortunately those rights were *moral rights*, and it was a matter of extreme difficulty for the individual raiyat to enforce in his own case, by legal proof, the rights which were generally admitted to have accrued to the raiyat in the abstract."

It was objected to this presumption that it reversed the burden of proof, and required the landlord to prove the negative. The objection was fully met by the following reply:—Courts of equity have shifted the burden of proof on equitable principles, when they have found it impossible to do justice without reversing the rules of evidence, *e. g.*, in the case of young men of expectations dealing with money-lenders. The presumption in this sub-section is equitable, for raiyats are very ignorant, and are not able to obtain competent legal advice:

and further, because the landlords can produce far better evidence than the raiyats ; they can give the direct oral testimony of their agents, and such evidence may be corroborated by measurement, jama-wasil-baki and other papers ; the raiyats have only rent receipts, if they have any papers at all ; and these receipts do not state the lands held by the raiyats. The presumption operates somewhat hardly on auction purchasers. But, then, they are speculators in land-rents who buy with full knowledge of their position and have many advantages in other ways : and they consider the advantages and disadvantages and regulate their bids accordingly. (Evans in Council.)

Settled raiyats to have occupancy-rights.

21. (1) Every person who is a settled raiyat of a village within the meaning of the last foregoing section shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

(2) Every person who, being a settled raiyat of a village within the meaning of the last foregoing section, held land as a raiyat in that village at any time between the second day of March, 1883, and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act.

This is new.

This section restores an ancient customary right. "Its provisions," it was remarked, "are unassailable. The khudkhast raiyat's rights in the village lands are independent of those of the rent-receiver, and it matters not into how many estates the village may be divided. The raiyat is a khudkhast raiyat *of that village*, and has, by custom, as well as by old law, a right of occupancy in any land he may cultivate in that village *without reference to whom he pays his rent*."

The 2nd of March, 1883, was the date on which the motion was made in the Legislative Council for leave to introduce the Bengal Tenancy Bill. The object of sub-section (2) is to protect raiyats who may have been induced, while the Bill was before the Council, to contract themselves out of their rights.

The effect of these two sub-sections is that all raiyats, who held some land of a village, from the 2nd of March, 1871, or any earlier period, acquired the right of occupancy in all lands of that village held by him on the 2nd of March, 1883. But, if before the 1st of November, 1885, he was dispossessed of any such land

by a decree or order passed by a Court, he can no more assert the right of occupancy in such land. If, however, he was dispossessed, out of Court, by the landlord, or if he left the village and the landlord entered into the land, he may sue to recover the land, even if held for one year only before such dispossession or abandonment.

The right of occupancy under this section is an incident of the status of the settled raiyat. Such a raiyat, so long as he retains the status, at once acquires the occupancy-right, when he is allowed to take up any new lands. It will be remembered, that though the status is acquired by holding some land of the village for twelve years, the status is retained by holding any land of the village irrespective of the period during which it has been held. If the raiyat ceases to hold any land of the village, the status continues to attach for one year after such ceasing under sub-section (5) of the preceding section, or, for a longer period, under sub-section (6) of that section.

Restrictions on contracts.—This section has to be read with section 178, *post*, which provides :

(1) "Nothing in any contract between a landlord and a tenant made, before or after the passing of this Act,

(*a*) shall bar in perpetuity the acquisition of an occupancy-right in land, or

(*b*) shall take away an occupancy-right in existence at the date of the contract."

(2) "Nothing in any contract made between a landlord and a tenant, since the 15th day of July, 1880, and before the passing of this Act, shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land."

(3) "Nothing in any contract made between a landlord and a tenant, since the passing of this Act,

(*a*) shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land."

The effect of these restrictions on contracts is—(1) that no contract made after the 15th of July, 1880, shall affect the acquisition of the occupancy-right by a raiyat, and (2), if the contract was made before the 15th of July, 1880, it shall not bar the acquisition of such right in perpetuity, nor extinguish any existing occupancy-right. A contract, therefore, entered upon before the 15th of July, 1880, which only barred the acquisition of an occupancy-right for a limited period, continues to be valid.

The Government of India in para. 85 of their letter, No. 6 of the 21st March, 1882, to the Secretary of State for India, observed: "Such is the power of the zemindars, so numerous and effective are the means possessed by most of them for

inducing raiyats to accept agreements which, if history, custom and expediency be regarded, are wrongful and contrary to good policy, that to uphold contracts in contravention of the main purpose of the Bill would be, in our belief, to condemn it to defeat and failure. It is absolutely necessary that such contracts should be disallowed, and in this conclusion we have the support, not only of the Bengal Government, but also of the almost unanimous opinion of the Bengal officers."

Limitations to occupancy-rights.—The provisions of this section apply only to ordinary lands. The acquisition of a right of occupancy in the landlord's private lands (khamar, nij-jote, kamat, &c.) is by section 116, *post*, kept on the same footing as under the repealed Acts. The acquisition of an occupancy-right in utbandi lands and churs is also by section 180, *post*, kept on the same footing as under the repealed Acts. Occupancy-right is not acquired in a landlord's private lands, if they are held under a lease from year to year or under a lease for a term of years; nor in utbandi or chur lands, unless the *same* lands are held for twelve continuous years.

Effect of acquisition of occupancy-right by landlord.

22. (1) When the immediate landlord of an occupancy-holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, the occupancy-right shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

This is new, and enacts a rule of merger.

It is only when the immediate landlord acquires the right of occupancy, and both the interests are united in the same person that the occupancy-right ceases to exist. If, however, the occupancy-right is acquired by a superior landlord, *i. e.*, by the landlord of the landlord, there is no union of the two rights in the same person, and the right of occupancy continues to subsist.

This sub-section does not declare the effect of the acquisition of a share of an occupancy-right by the immediate landlord. It would appear that in such a case the share so acquired would also cease to exist.

It is to be noted that this section has no application to a landlord who is only a non-permanent tenure-holder. If occupancy-right is acquired by such a landlord by transfer or succession, the right continues to subsist.

It was once proposed (Bill No. I, sec. 56) to enact that when the immediate landlord, after acquiring an occupancy-holding, lets out the holding to a raiyat,

the raiyat shall at once acquire an occupancy-right in the holding. But the provision has been omitted. If the holding is let out to a settled raiyat, he acquires, under section 21, an occupancy-right at once; but if it is let out to a non-occupancy-raiyat, he does not at once acquire such right. If there are under-raiyats in the holding, the landlord's purchase elevates them to the position of raiyats; for, as soon as the holding is purchased, the occupancy-holding ceases to exist, and they begin to hold under a proprietor or a tenure-holder. If, after purchase, the landlord lets out the lands of such a holding, the lessee would not be a raiyat at all, but a tenure-holder.

Case-law.—The right of occupancy is a right against somebody and cannot be acquired by a man against himself (*Lal Bahadur Sing* v. *Solano*, Ind. 10 Cal. 45, 12 Cal. 599). A man cannot occupy the double character of landlord and raiyat and make a pretence of paying rent to him to acquire, or keep alive, a right of occupancy against himself (*Kissenprasad Sing* v. *Raja Radhaprasad Singh*, quoted in the preceding case; *Radha Gobind Koer* v. *Rakhal Das Mukerjee*, Ind. 12 Cal. 82).

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder, it shall cease to exist; but nothing in this sub-section shall prejudicially affect the rights of any third person.

This is new.

From the wording of this sub-section it may be inferred that when an occupancy-right is acquired by a fractional landlord, whether he be the immediate landlord or a superior landlord, the occupancy-right ceases to exist. But this can hardly be the intention of the Legislature. For, there does not seem to be any valid reason why a fractional tenure-holder or proprietor should not be allowed to hold an occupancy-right under an inferior tenure-holder, when a sole proprietor or tenure-holder is allowed to do so. This sub-section should, therefore, be understood as if it were worded "If the occupancy-right in land is transferred to the immediate landlord who is jointly interested in the land," &c.

This sub-section extends the rule of merger in sub-section (1) to fractional landlords. But there is this difference; whereas the rule of merger in sub-section (1) applies to all modes of acquisition of an occupancy-right, whether by transfer or by succession, or otherwise the rule in sub-section (2) is limited to the acquisition of such a right by transfer only. It would thus appear that a joint landlord may, by holding land under his co-sharers and paying rent to them, acquire a right of occupancy, and the right will subsist so long as he continues to hold the land. (See *Kaliprasad* v. *Shah Luttifat Hossein*, 12 W. R. 418; *Guru Prasanna Ray*

v. *Gobind Prasad Das*, 1 W. R. 34 ; *Jardine, Skinner & Co.* v. *Rani Sarut Sundari Devi*, 3 Cal. 140, a P. C. case.)

(3) A person holding land as an ijaradar or farmer of rents shall not, while so holding, acquire a right of occupancy in any land comprised in his ijara or farm.

This is new, and codifies the existing case-law.

Sub-sections (1) and (2) have no application to non-permanent tenure-holders. For one class of such tenure-holders sub-section (3) makes provision. But its language is not so clear as could be wished. As it stands, it may be explained to mean that, so long as a person holds an ijara or farm, he cannot acquire a right of occupancy in any land in the ijara or farm, even by transfer or succession. This can hardly be the meaning intended to convey. The word "acquire" should, therefore, be understood to mean "acquire by holding on the advantage of the position as ijaradar or farmer."

Case-law.—A person, occupying land because of the opportunity afforded to him as an ijaradar or ticcadar, cannot, under colour of that character, acquire a right of occupancy (*Umanath Tewari* v. *Koondun Tewari*, 19 W. R. 177; *Jardine, Skinner & Co.* v. *Rani Sarat Sundari*, 25 W. R. 347 ; in P. C. 3 Cal. 140 ; *see* also *Rai Kamal Dasi* v. *Laidley*, Ind. 4 Cal. 957). A person, who holds as a farmer, and, while so holding, acquires an occupancy-right by purchase within the farm, is entitled to retain the occupancy-holding when the term of the farm expires (*Ram Saran Sahai* v. *Veryag Mahtoon*, 25 W. R. 554). Where a person, holding some land as a raiyat, acquires a farming lease of it and takes advantage of his position to hold on the land, he cannot add the period so held to complete twelve years of occupation and acquire the right of occupancy. His raiyati right remains in abeyance till the landlord's rights are released from his custody (*Savi* v. *Panchanan Ray*, 25 W. R. 503). Such raiyati right does not merge but only remains in abeyance : so that a person may add the period he had held as raiyat before he took the farming lease to the period he held after the lease has expired to complete twelve years of occupation and acquire the right of occupancy (*Mukundalal Dobey* v. *Crowdy*, 8 Beng. App. 95, 17 W. R. 274).

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as proprietor or permanent tenure-holder, or by subsequently holding the land in ijara or farm.

This is new.

It is more of an independent sub-section than an explanation of the previous

three sub-sections. It provides for some cases converse to those mentioned in the latter. It enacts that if an occupancy-raiyat acquires only a share of the landlord's right, the landlord being a proprietor or a permanent tenure-holder, the occupancy-right would not cease to exist. Nor would it cease to exist if the raiyat acquires the entire and non-permanent interest of an ijaradar or farmer.

Case-law.—A person, holding as a raiyat for twelve years before his holding as a farmer, retains his right of occupancy after his farming interest has expired (*Watson & Co.* v. *Jogendro Narain Roy*, 1 W. R. 76).

Summary.—The effect of the provisions of this section taken with the rule, *inclusio unius, exclusio alterius*, would appear to be :—

1. If an occupancy-right is acquired by the immediate landlord who is a sole proprietor or a sole permanent tenure-holder, the occupancy-right ceases to exist irrespective of the mode of such acquisition.

2. If an occupancy-right is acquired by the immediate landlord who is a part proprietor or a part permanent tenure-holder, the occupancy-right ceases to exist, if it is acquired by transfer; but it does *not* cease to exist, if acquired in any other mode of acquisition.

3. If an occupancy-right is acquired by the immediate landlord who is a sole or part non-permanent tenure-holder (including an ijaradar or farmer), the occupancy-right does *not* cease to exist.

4. If an occupancy-raiyat acquires the whole of the immediate landlord's rights, when the landlord is a proprietor or a permanent tenure-holder, the occupancy-right ceases to exist.

5. If an occupancy-raiyat acquires only a share of the immediate landlord's interests, when the landlord is a proprietor or a permanent tenure-holder, the occupancy-right does *not* cease to exist.

6. If an occupancy-raiyat acquires the whole or part of the immediate landlord's interests, when the landlord is a non-permanent tenure-holder (including an ijaradar or farmer), the right of occupancy does *not* cease to exist.

7. An ijaradar or farmer may not, by holding land on the opportunity afforded by his position, acquire any right of occupancy. But if he had held as a raiyat, before he got the ijara or farm, his right as a raiyat, whether an inchoate or a complete right of occupancy, remains only in abeyance and revives after the term of the ijara or farm has expired.

It is to be noted that in all cases where the occupancy-right ceases to exist, if there is any under-raiyat in the holding, his status is elevated to that of a raiyat.

Incidents of occupancy-right.

Rights of raiyat in respect of use of land.

23. When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy; but shall not be entitled to cut down trees in contravention of any local custom.

This is new.

This section must be read with section 178, sub-section (3), clause (*b*), which enacts that nothing in any contract, between the landlord and the tenant, after the passing of this Act, shall take away or limit the right of an occupancy-raiyat to use land as provided by this section.

The raiyat may; under this section, use the land in any manner he pleases, except that (1) such use must not render the land unfit for the purposes of the tenancy; (2) such use must not materially impair the value of the land; and (3) such use must not be cutting down trees against custom. In cases (2) and (3) the landlord's remedy against waste which is complete, is a suit for damages; and against waste which is impending, or for further waste which is impending, a suit for injunction restraining the raiyat from committing waste. But if the waste is in violation of a condition carrying forfeiture, the landlord may also eject under section 25, *post*. In case (1) the landlord has, over and above the remedies by a suit for damages and for injunction, the right to sue for ejectment under section 25. Whenever he sues under section 25, he has to satisfy the conditions of section 155.

Render unfit for the purposes of the tenancy.—Digging earth for purposes of brick-making, erecting houses to hire out, converting the land to garden, &c., are examples of rendering the land unfit for the purposes of a raiyati tenancy.

Materially impair the value of the land.—To avoid redundancy, these words must be understood to exclude cases where the value is impaired to an extent, or by a mode as to render the land unfit for the purposes of the tenancy. These words should, further, be read with section 76, *post*, which provides that, till the contrary is proved, construction of wells, tanks, water-channels and other works for the storage of water necessary for purposes of agriculture or purposes incidental thereto, preparation of land for irrigation, drainage, embankment, enclosure, erection of suitable dwelling-houses and out-offices, shall be presumed to be *improvements*.

To cut down trees.—To avoid redundancy, this clause, again, must be understood to exclude cases which fall within the clause "impair materially the value of the land." So that the meaning is that the raiyat is entitled to cut down trees which he or his predecessor in interest planted, but not timber or fruit trees that stood on the land before the creation of the tenancy. The value of homestead land greatly depends on the fruit trees and bamboos that stand on the land. A raiyat with an occupancy-right is not entitled to cut the former if they existed before his time, but he may take the latter without spoliation.

In contravention of any local custom.—It appears, from the wording of this clause, that the burden is on the landlord to prove the custom. And this is consonant with the rule, that he, who affirms the positive, has to prove it.

Rulings under the repealed Acts.—(1) The landlord had a right in fruit trees grown on the land by the raiyat (*Abdul Rahman* v. *Dataram Bashi*, W. R. Sp. 367). This ruling is now set aside as to the occupancy-raiyat, except if there be custom to the effect. (2) An occupancy-raiyat could not dig a tank (*Tarini Charan Bose*, v. *Debnarain Mistri*, 8 Beng. App. 69). This ruling is now subject to section 76, and the raiyat is entitled to dig a tank, if it is necessary for agricultural and incidental purposes. (3) A raiyat could not dig a tank in breach of a stipulation (*Manendra Chandra Sarkar* v. *Maniraddin Biswas*, 11 Beng. App. 40). This ruling remains valid, except for contracts after the passing of this Act, and when the tank is necessary for agricultural purposes or for purposes incidental thereto. (4) An occupancy-raiyat could not erect dwelling-houses and appurtenances (*Jagat Chandra Roy Chowdry* v. *Isan Chandra Banerjee*, 24 W. R. 220; *Lal Sahoo* v. *Deo Narain Sing*, Ind. 3 Cal. 781, 2 Cal. 294). These rulings are now set aside, and the ruling in *Naimatulla Ostagar* v. *Gobin Chandra Dutt*, 6 W. R. X. 40, that a raiyat may erect a pucka dwelling-house on the land so long as he does not injure it to the detriment of the landlord, is now codified by this Act. (5) An occupancy-raiyat could not injure land by taking earth for making bricks (*Kadambini Devi* v. *Nabin Chandra Addak*, 2 W. R. 157; *Ananda Kumar Mukerjee* v. *Visvanath Banerjee*, 17 W. R. 416). These rulings remain valid under the present Act. When a landlord prays for prohibitory or mandatory injunction against misuse, he must show that he has used due diligence (*Peter Nicholl* v. *Tarini Charan Bose*, 23 W. R. 298; *Noyna Misser* v. *Rupikan*, Ind. 9 Cal. 609, 12 Cal. 300). He is not entitled to an injunction if he has acquiesced or lain by.

Obligation of raiyat to pay rent.

24. An occupancy-raiyat shall pay rent for his holding at fair and equitable rates.

Old Acts.—Section 5 of Act X of 1859, section 5 of Act VIII B. C. of 1869.

Fair and equitable rates.—These are historical words in the rent literature of Bengal. A hard battle was fought over them in the Great Rent Case of 1865. Yet another battle may be fought over them. For comprehending their meaning under this Act, reference is requested to paras. 46 to 49 of the Report of the Rent Commission, of which the following is the substance :—

Rent in India is *not* the surplus profit of capital applied to agriculture, nor does it depend immediately upon, or is regulated by, the profits of capital ; but it is that proportion of the produce of the soil, deliverable in kind, or payable in money, as the Government may, from time to time, determine. If it be asked on what principle Government should determine this proportion—in other words, what shall be considered *fair and equitable*—our answer is—*such a share as shall leave enough to the cultivator of the soil to enable him to carry on the cultivation, to live in reasonable comfort, and to participate to a reasonable extent, in the progress and the improving prosperity of his native land.* In the practical application of this principle, a single rule or set of rules cannot be laid down. The events of nearly a century have created relations of persons and things and inequalities in existing rents, which must be taken into account in any endeavour to settle rents or enhancement of rents. We are, therefore, all agreed that existing rents should be taken as the basis of operation ; in other words, that no attempt should be made to replace these existing rents by any new and uniform standard ; and that, apart from the usual and recognized grounds of abatement, there exists no necessity for reducing rents generally, in any part of the country. *At the same time we think that in regulating future enhancements, regard may reasonably be had to existing inequalities, and that landlords who have already benefitted more than others, are not entitled to an equal accession of advantage in the future.* Agricultural prosperity is uncertain in every country, and probably nowhere so uncertain as in India. Here the cultivator has no capital to draw upon to tide over a succession of bad years. He has not the means to introduce more effective agency of cultivation ; and the produce of the land depends almost solely on the quality of the soil which varies from the rich alluvial *churs*, yielding bumper crops in return for the mere exertion of sprinkling the seed, to the stiff baked *máts*, which are with difficulty turned up by the straining oxen and the toiling ploughman to be ready in time for the rice seedlings, which have to be planted out one by one through the full expanse of every field. An average raiyat family can, in the former case, cultivate more land and raise more produce than in the latter. Here the water is deficient for the *aman paddy*, there, the *aus* is drowned by an unforeseen inundation. In one part of the country land is sufficiently plentiful to allow

a fourth to remain fallow every year, while in another, soil never gets rest. Then, again, if rent is payable in money, part of the produce must be sold to obtain it. If the mart is near, the cost and labour of carriage are inconsiderable, and the raiyat may choose the time when prices are most favourable, but these become a serious item when the produce has to be carried over roadless plains and across unbridged *nullahs* to a distant and uncertain market. Further, in one district, the adult population are healthy and strong ; in another the climate is so bad, that one-third on an average are down with fever and ague, and the remaining two-thirds, in various stages of convalescence, lack the physical vigor necessary to successful toil. These are *some of the many points* which must be taken into account and allowed for in individual cases to arrive at *fair and equitable rates* of rent, for, in order to be really so, they must be fair and equitable in the concrete as well as in the abstract.

Shall pay.—It does not seem that, under the provisions of this Act, an occupancy-raiyat may claim reduction in a suit for arrears of rent. *See* notes under section 38. He may sue for reduction of rent only on the grounds of deterioration of soil and of decrease of price of staple food-crops, but not on any other ground, *however excessive and exorbitant his rent may be.* Further, the initial rent of land let to a settled raiyat, who at once acquires a right of occupancy in such land, depends on the will of the landlord, and is therefore a competitive rent. The restriction of reduction of rent to the above two grounds and the omission to protect the initial rent of the occupancy-raiyat have altogether narrowed the application of this section. It gives the occupancy-raiyat the right to hold his land on fair and equitable rent. But the other provisions of the Act take away his power to assert that right in most cases. His power to assert that right is only limited to the following cases : (1) when new land is let to a settled raiyat without settling the rent ; (2) when a settled raiyat is sued for rent in the alternative of ejectment under section 157 ; and (3) when the landlord sues for enhancement of rent. The first two cases, again, depend solely at the will of the landlord.

Protection from eviction except on specified grounds.

25. An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(*a*) that he has used the land comprised in his holding in a manner which renders it unfit for the purpose of the tenancy, or

(*b*) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

This is new.

Along with this section must be read sections 65, 89, 155 and section 178, sub-section (1), clause (3).

Section 65 provides that an occupancy-raiyat shall not be ejected for arrears of rent.

Section 89 provides that no tenant shall be ejected from his holding, except in execution of a decree.

Section 178, sub-section (1), clause (3), provides that no contract made with the landlord, either before or after the passing of the Act, shall entitle a landlord to eject his tenant otherwise than in accordance with the provisions of this Act.

Section 155 provides that (1) a suit for ejectment shall not be entertained, unless (*a*) the landlord has served a notice on the tenant specifying the particular breach of condition or misuse and requiring the tenant to remedy the breach or misuse, where it is capable of remedy, and to pay compensation for it; and (*b*) the tenant has failed to comply, within a reasonable time, with the requisition: (2) a decree in such a suit shall (*a*) declare what compensation is payable to the landlord for the breach or misuse; (*b*) declare whether the breach or misuse is capable of remedy or not; and (*c*) fix a time (which may be extended) for paying the compensation and remedying the breach or misuse, if capable of remedy: and (3) a decree for ejectment shall not be executed, if the tenant pays the compensation and remedies the breach or misuse within such time.

The effect of these sections taken together, is :—

1. An occupancy-raiyat shall not be ejected except by suit, notwithstanding any contract to the contrary made either before or after the passing of this Act.

2. A suit for ejectment shall not lie if notice has not been served on him, and a reasonable time has not expired after notice. It shall not lie except on the two grounds mentioned in this section.

3. An occupancy-raiyat shall not be ejected for arrears of rent at all, even if that be a condition of forfeiture in a contract made before the passing of this Act.

4. He may be ejected for a breach of condition carrying forfeiture, if such condition is consistent with the provisions of this Act, but only after failing twice (after notice and after decree), to remedy the breach and pay compensation under section 155, where the breach is remediable.

5. He shall be ejected for breach of such a condition, if the breach is irremediable.

6. He may be ejected for misuse, after such double failure to remedy the misuse and pay compensations, when the breach is remediable.

7. He shall be ejected for misuse, if the misuse is irremediable.

See notes under section 155.

Limitation.—For ejectment under clause (*b*), *i. e.*, on the ground of breach of a condition carrying forfeiture, the period of limitation is prescribed by Art. 1, Schedule III of this Act, namely, one year from the date of the breach. No limitation is prescribed in that Schedule for ejectment under clause (*a*), *i. e.*, on the ground of misuse. It would appear that the limitation is six years under Art. 120, Schedule II of the Indian Limitation Act XV of 1877. But though the period of limitation may be of six years, it is dangerous to make delay, if such delay may be construed as acquiescence, *e. g.*, when a landlord stands looking on, while monies are being expended by the raiyat upon the faith that no objection will afterwards be made to his enjoying the land in the mode diverted. (*Beni Madhav Banerjee* v. *Jay Krista Mookerjee*, 7 Beng. 153, 12 W. R. 495 ; *Durga Prasad Misser* v. *Brindaban Sukul*, 7 Beng. 159 ; *Sib Das Banerjee* v. *Baman Das Banerjee*, 15 W. R. 360 ; *Rani Rama* v. *Jan Mahomed*, 3 Beng. A. C. 18; *Peter Nichol* v. *Tarini Charan Bose*, 23 W. R. 298 ; *Noyna Misser* v. *Rupikan*, Ind. 9 Cal. 609, 12 Cal. 300.) But if the landlord objects to the misuse within reasonable time of his knowledge, he may delay in bringing the suit without risk.

Case-law.—It was remarked in *Noyna Misser* v. *Rupikan* (Ind. 9 Cal. 609)—"No authority has been cited to us, nor any reason satisfactory to our minds, to show that where a tenant has been guilty of a breach of duty in the use of his land, such as making a tank in it, building on it improperly, or changing the character of the cultivation, this operates necessarily as a forfeiture and render him liable to be evicted." This section now is express authority for eviction in certain cases. Changing the character of the cultivation was never a ground of ejectment ; nor is it any ground under this Act.

26. If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immoveable property: provided that, in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the Crown, his right of occupancy shall be extinguished.

Devolution of occupancy-right on death.

This is new.

This section sets at rest all doubts by expressly declaring the occupancy-right inheritable. Under the repealed Acts, though occupancy-right was generally treated as inheritable, there was no express declaration in them to that effect. And in *Ajodhya Prasad* v. *Imam Bandi Begum*, 7 W. R. 528, Peacock, C. J., questioned if an occupancy-right was necessarily inheritable. It is to be noticed that this section is wholly silent about testamentary succession; and the validity of bequests of occupancy-rights is left to be decided by the Courts. The right of making bequests must stand or fall with the right of transferring *inter vivos*; where occupancy-right is transferable, bequests will be valid, and where not transferable, invalid. The omission to provide for testamentary succession is a necessary consequence of the omission of the provisions of transferability. It will be seen that under section 178, sub-section (3), clause (*d*), the raiyat may not contract himself out of his right to transfer or bequeath in accordance with local usage.

Other incidents of occupancy-right.

The above sections on the incidents of occupancy-rights omit all reference to two points: 1, subletting; and 2, transferability.

Subletting.—The provisions regarding subletting have been relegated to Chapter IX, section 85, which provides that a raiyat may sublet lands of his holding; but if it be without the landlord's consent, it shall not be binding on him unless it be under a registered lease, when it shall be valid for nine years. *See* notes under section 85. Under section 48, the raiyat in case of a registered lease may recover rent at 50 per cent. more than what he himself pays, otherwise at only 25 per cent. more. The raiyat may not contract himself out of his right to sublet (section 178, sub-section (3), clause *e*).

Transferability.—All provisions about transferability of occupancy-rights have been omitted from this Act. The reason of this omission was thus explained in Council: "Apart from the argument directed against the principle of transfer-

ability, the Committee found immense difficulty in devising any practical scheme of pre-emption, any satisfactory safeguard against the dreaded money-lender * * *; and in view of these difficulties there is something to be said for leaving the custom to strengthen itself and crystallize into a shape which may hereafter render its regulation less difficult than at present. We have, moreover, made it clear (illus. 1 to sec. 183 and sec. 178, sub-sec. (3), cl. *d*), that where the custom of transfer without the landlord's consent has grown up, it is not the intention of the Legislature in any way to interfere with it."

The original scheme was to make occupancy-rights transferable by law, subject to the landlord's right of pre-emption. Subsequently it was proposed to legalize transferability in Bengal, but to leave it in Behar to local custom. Finally, the transferability of occupancy-rights both in Bengal and Behar, has been left to custom, except that they have been made saleable for their own arrears.

Case-law.—In an early case, *Taramani Dasi* v. *Biresvar Majumdar*, 1 W. R. 86, it was held that a right of occupancy was transferable *per se*. It was remarked: "The question thus arises,—Is a right of occupancy a transferable tenure? We think it is so transferable. A right of occupancy is a perpetual lease, the holder of which cannot be ejected, so long as he pays a fair and equitable rent. There are many similar rights common in different parts of Bengal, such as the jotes of Rungpore and the howlas and nim-howlas of Backerganj, which are in no respect higher than that of an occupancy-right, inasmuch they are merely personal rights, which are, and have always been, held to be transferable and heritable." In *Sriram Bose* v. *Biswanath Ghose*, 3 W. R. X. 3, however, it was held whether occupancy-right was transferable or not, depended upon local custom. Finally, in the Full Bench case of *Ajodhya Prasad* v. *Imam Bandi Begum* (7 W. R. 528), the decision in *Taramani Dasi's* case was overruled, and it was held that the statutory right of occupancy was not transferable *per se*: and in *Nunkoo Roy* v. *Mahabir Prasad*, 11 W. R. 405, 3 Beng. App. 35, that the statutory occupancy-right was transferable by local custom. The rulings in these two cases have been followed ever since and are now settled law. (*Annapurna Dasi* v. *Umacharan Das*, 18 W. R. 55; *Sankarpati Thakurani* v. *Saifulla Khan*, 18 W. R. 507; *Boote Sing* v. *Murat Sing*, 20 W. R. 478, 13 Beng. 284, note; *Narendra Narain Roy* v. *Isan Chandra Sen*, 22 W. R. 22, 13 Beng. 274; *Dwarikanath Misser* v. *Haris Chandra*, Ind. 4 Cal. 925.)

Local custom.—"In every district of Bengal there is different custom, and this question (whether the tenure is transferable by custom) can only be decided by reference to local custom. What is the custom in lower Bengal, is not so in the eastern and northern parts, and *vice versâ*. In some parts the khudkhast tenants are allowed to sell without reference to their landlord; in other parts, the practice

has not been allowed : and the only method by which the question in each case can be decided, is by reference to local custom, and not by the evidence of a few antagonistic witnesses. We therefore remand the case to the Judge for the purpose of a local investigation made with regard to the custom that prevails in that part of the district in which these lands are situate." (*Joy Kissen Mukerjee* v. *Raj Kissen Mukerjee*, 1 W. R. 153.) It was observed in *Chandra Kumar Roy* v. *Piarilal Banerjee*, 6 W. R. 190, that the custom of transferability "*need not be absolutely invariable*. It can be proved by evidence amounting to much less than this." Again, in *Joy Kissen Mukerjee* v. *Durga Narain Sing*, 11 W. R. 348, it was remarked : "There was no necessity for the witnesses to fix any particular time from which such tenures became transferable from one party to another. * * * It is sufficient that there is at present the custom." (*See* also *Annapurna Dasi* v. *Umacharan Das*, 18 W. R. 55, that the custom must be of that part of the country where the tenancy is situate ; *Dwarikanath Misser* v. *Haris Chandra*, Ind. 4 Cal. 925, that the custom must be clear and well defined.)

It will be understood from these rulings that the custom which is accepted to make occupancy-rights transferable is very much like "mercantile usage" which requires neither antiquity nor uniformity nor notoriety ; it may still be in its growth, and may require evidence to support it in each case. In fact, for the statutory right of occupancy which dates from 1859, the custom of transferability could only grow after that year. It will be seen that in section 178, sub-section (3), clause (*d*), occupancy-rights are spoken of, as transferable by "*local usage*." From the statistics collected (*Ind. Gaz. Extra. Supp.* Oct. 11, 1884, pp. 165-161), it would be seen that the usage is widely prevalent in Bengal, though not so in Behar.

Effect of transfer, when not allowed by custom.—In *Gora Chand Mustafi* v. *Barada Prasad Mustafi*, 11 W. R. 94, 13 Beng. 279, note, it was held that the mere transfer of an occupancy-right, where it was not transferable by local custom, did not cause forfeiture of the transferor's right of occupancy ; and the landlord had no right of khas possession against the transferor and the transferee jointly. In *Dwarikanath Misser* v. *Kanye Sardar*, 16 W. R. 111, possession was refused, even against the transferee alone. But this last ruling was opposed to *Durga Sundari* v. *Brindaban Chandra Sarkar*, 11 W. R. 162 ; and it was overruled by the Full Bench case of *Narendra Narain Roy Chowdry* v. *Isan Chandra Sen*, 13 Beng. 274, 22 W. R. 22, in which, following the ruling in *Bibi Shohada* v. *Smith*, 12 Beng. 82, 20 W. R. 139, it was held that the landlord had a right of khas possession against the transferee. The effect of an invalid transfer on the rights of the transferor was not decided in these cases. Some remarks in *Bibi Shohada's* case, which appeared to lay down a rule that, after the landlord had obtained khas possession, the transferor may claim the lands of him, were explained, in the subsequent Full Bench

case by the Judge who had delivered judgment in the former case, as not meant to express any opinion judicially on the rights of the transferor. And in the Full Bench case, Couch, C. J., remarked that a transfer put an end to the occupancy-right which existed only so long as the raiyat himself continued to hold or cultivate the land. In *Dwarikanath Misser* v. *Haris Chandra*, Ind. 4 Cal. 925, where an occupancy-right was transferred by execution sale and the purchaser allowed the old raiyats to hold on and occupy the lands, it was held that the landlord had a right of ejectment against the transferor and the transferee jointly, because, it was said, the old raiyats were no longer in occupation as occupancy-raiyats, but only as tenants-at-will. But, in *Susti Dhar Biswas* v. *Madan Sardar*, Ind. 9 Cal. 648, the Court refused to follow this last decision, and refused ejectment against the transferor who continued to be in possession under the transferee. It was observed that the transferor not having abandoned his connection with the land, the landlord had no right to re-enter. (*See*, also, Ind. 9 Cal. 526.)

The result appears to be that the landlord is not bound to recognize the transferee, where occupancy-right is not transferable by usage. And he may eject the transferee if the latter enters into actual possession of the land by himself or otherwise. But if the transferor continues in possession, his right to eject is doubtful.

The effect of transfer of an occupancy-holding, whether it was voluntary or otherwise, was the same in both cases, under the old Acts (*Dwarikanath Misser* v. *Haris Chandra*, Ind. 4 Cal. 925; *Kripanath Chaki* v. *Dayal Chand Pal*, 22 W. R. 169). This rule, under the present law, is subject to the exception in case of sales on account of arrears of its own rent, where the purchaser acquires a valid title in spite of local custom and irrespective of the landlord's consent (sec. 65).

Recognition by landlord of transfer against usage.—Where the occupancy-right is not transferable by usage, the landlord may not repudiate the transferee whom he has once recognized as tenant. Such recognition may be (1) by taking the rent, without objection, from the transferee directly, with the knowledge of the transfer (*Nobo Kumar Ghose* v. *Kishen Chandra Banerjee*, W. R. Sp. X. 112; *Mritunjoy Sarkar* v. *Gopal Sarkar*, 10 W. R. 466; *Bharat Roy* v. *Gunga Narain Mahapatra*, 14 W. R. 211; *Land Mortgage Bank of India* v. *Dwarikanath Roy*, 15 W. R. 320); (2) by allowing the sums paid by the transferee into the Collectorate to be credited to the landlord's arrears of revenue (*Ramgobind Roy* v. *Dasabhuja Devi*, 18 W. R. 195); (3) by registering the name of the transferee or his heirs in his sherista (*Amin Baksh* v. *Bhyro Mandal*, 22 W. R. 493); and (4) by making the transferee a party to a suit for rent and accepting a decree against him jointly with the transferor (*Ram Kisore Acharjee Chowdry* v. *Krishna Mani*

Debi, 23 W. R. 106). But (1) the mere knowledge of the landlord is no recognition (*Sarkies* v. *Kali Kumar Roy*, W. R. Sp. X. 98); (2) nor the acceptance of rent paid by the transferee as "marfatwaree" (*Khudiram Chatterjee* v. *Rookhini Baistabi*, 15 W. R. 197); (3) nor the acceptance of rent by the gomasta for one or two years, when the transferee did not enter into communication with the landlord about the transfer and obtain his consent to it (*Bhajahari Banik* v. *Aka Golam Ali*, 16 W. R. 97); (4) nor the acceptance of rent paid by the transferee without notice that he claims to pay rent by right of transfer (*Gourlal Sarkar* v. *Ramesvar Bhoumik*, 6 Beng. App. 92).

Registration of the transferee's name.—Provisions were made in the Bill to enforce registration of transfers and successions of occupancy-rights in the landlord's sherista. But they fell through with the provisions regarding transferability. No registration is now necessary; and this is in accordance with the repealed Acts, under which it was held that such registration at the landlord's sherista was only required in the case of intermediate tenure-holders under section 27 of Act X of 1859 and section 26 of Act VIII B. C. of 1869 (*Taramani Dasi* v. *Bireswar Majumdar*, 1 W. R. 86; *Umacharan Sett* v. *Hariprasad Misser*, 10 W. R. 101; *Jaykristo Mookerjee* v. *Durganarain Roy*, 11 W. R. 348).

Enhancement of rent.

Presumption as to fair and equitable rent.

27. The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

Old Acts.—Section 5 of Act X of 1859 and the same section of Act VIII B. C. of 1869. These sections ran as follows :—

"Ryots having rights of occupancy, but not holding at fixed rates as described in the two preceding sections, are entitled to receive pottahs at fair and equitable rates. In case of dispute, the rate previously paid by the ryot shall be deemed to be fair and equitable, unless the contrary be shown in a suit by either party under the provisions of this Act."

Difference from old law.—The difference in the wording of the present section should be noticed. "In case of dispute" and "in a suit by either party under the provisions of this Act" have now been omitted. This omission, taken with the position of this section in sub-chapter "Enhancement of rent" removed from section 24 in sub-chapter "Incidents of occupancy-raiyats" to which it might have been joined as in the old Acts, would tend to show that the presumption, that existing

rent is fair and equitable, arises only in enhancement suits and not in any other suits; and there again, always in favor of the raiyat and never against him.

Presumption in enhancement suits.—In enhancement suits it is not sufficient for the landlord to prove that one or more of the grounds of enhancement exists. He would have been bound to prove that much, even if this presumption did not arise. He has further to show that enhancement may be allowed without being unfair and inequitable. In *Hills* v. *Jendar Mandal* (1 W. R. 3), it was proved that the productive powers of the land had increased, but the Court disallowed enhancement because the landlord did not give any evidence or data upon which the Court could decide what was a fair and equitable rent. The presumption, that existing rent is fair and equitable is, thus, not rebutted till after proving the existence of some grounds of enhancement, the landlord succeeds to show that an enhanced rent will be fair and equitable, that is to say, will be such as the raiyat can afford to pay and yet live and prosper.

Restriction on enhancement of money-rents.

28. Where an occupancy-raiyat pays his rent in money, his rent shall not be enhanced except as provided by this Act.

This is new.

Money-rent may, thus, be enhanced only by suit (sec. 30), or by a registered contract (sec. 29). From the latter, however, is excepted the case where enhanced rent has been paid for the preceding three years, *i.e.*, where rent has been enhanced by an executed contract (sec. 29, prov. 1).

Produce-rents.—It will be noted that no provisions of this sub-chapter, except those in section 27, apply to rent in kind. The others are restricted to rent paid in money. There are, thus, no rules for enhancing rent in kind incorporated in the Act. Of the four grounds of enhancement in section 30, the last three are inapplicable to rents in kind: and only the first ground applies. When an occupancy-raiyat pays rent in kind lower than the prevailing rate, his rent may be enhanced under the general rule of section 25 (that an occupancy-raiyat shall pay rent at fair and equitable rates), if the prevailing rate be a fair and equitable rate, *i.e.*, if it leaves to the raiyat enough to live and prosper. When his rent has been commuted to money-rent under section 40, all the provisions of this sub-chapter apply to his case.

Enhancement of rent by contract.

29. The money-rent of an occupancy-raiyat may be enhanced by contract, subject to the following conditions:—

(*a*) the contract must be in writing and registered;

(*b*) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;

(*c*) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract;

Provided as follows—

(i) Nothing in clause (*a*) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

(ii) Nothing in clause (*b*) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(iii) When a raiyat has held his land at a especially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

This is new.

It was considered that it would be destructive of the objects of the Act if occupancy-raiyats were left perfectly free to deprive themselves by contract of the right to hold at fair and equitable rates secured to them by law. Hence, this section, without absolutely preventing such contracts, enacts restrictions under which alone private contracts would be valid.

Clause (a).—This adds another class of documents, to those mentioned in section 17 of the Registration Act, of which the registration is compulsory.

Clause (b).—An enhancement of two annas in the rupee every fifteen years means an enhancement to more than double the initial rent in 90 years.

			Rs.	A.	P.			
Re. 1 is raised to	...	...	1	2	0	after	15	years.
,,	...	...	1	4	3	,,	30	,,
,,	...	...	1	6	9	,,	45	,,
,,	...	...	1	9	7	,,	60	,,
,,	...	...	1	12	9	,,	75	,,
,,	...	...	2	0	5	,,	90	,,

The efficiency of the restriction enacted in clause (*a*) has been generally under-rated. It has been said that there is nothing to prevent unscrupulous landlords to put a fictitious figure as existing rent and thus evade the provisions of this section. The returns filed by landlords under the Cess Act IX B. C. of 1880 (sec. 14 and sched. A) are, however, a binding record of rents against them. In these returns, the rent of the raiyats has never been overstated except by mistake. It was once proposed (Bill No. I) to require the Registering Officer to make an exceedingly complex judicial enquiry. In striking off that provision, the Legislature has gone to the opposite extreme. It would have been an useful provision if the parties had been required to satisfy the Registering Officer by producing a certified copy of an extract from the Cess return, where available, that the existing rent has not been overstated in the contract of enhancement. In case of dispute the Courts are sure to require the production of such a copy, if not voluntarily produced by the parties.

Clause (b). Rent previously payable by the raiyat.—This means the rent that was actually payable, and not such rent as was never actually payable, but the payment of which was postponed to some future time. Kabulyats are often come across in which a higher sum is put for rent and a large deduction is made under the name of *hájat map*, or some like name, and then a balance is given which is the rent actually payable.

Clause (c).—The rule in this clause has been introduced to lessen the harassment caused by frequent enhancements. The same rule partly applies to enhancement by suit (sec. 37). The period of fifteen years for which the raiyat is protected under this Act from further enhancement, is only half of what the Famine Commission recommended.

Proviso i.—This proviso is based on the principle that an oral contract, if acted up to, is quite as good as a registered contract. The same principle is recognized in section 48 of the Registration Act, under which a registered document does not take effect against an oral agreement if accompanied by possession. The language of the proviso, however, is not so clear as it might have been. The words, "from recovering rent at the rate at which it has been actually paid," might mislead the reader to conclude that the proviso is an exception to the whole of the preceding part of the section. But it is not really so. It is expressly an exception to only clause (*a*), which requires writing and registration. The meaning of the proviso would, thus, appear to be that where there is no registered contract made but the raiyat has paid an enhanced rent for three continuous years, the landlord may recover the enhanced rent, *if the enhanced increment do not exceed two annas in the rupee, and if it be not within fifteen years of a previous enhancement.* If it were meant that the landlord might recover any enhanced rent irrespective of its amount, the proviso would have run thus: "Nothing in clauses (*a*) and (*b*) shall prevent," &c.

Proviso ii.—This proviso is added to encourage improvements. Additional rent for improvements is looked upon in the light of interest on capital spent. The enhanced increment for improvements can, therefore, be only a reasonable interest on the capital spent; and this proviso does not validate a contract which fraudulently attempts to enhance rent, under the guise of improvement, to an amount otherwise not allowed under the provisions of this Act.

Proviso iii.—The words, "to pay such rent as he (the raiyat) may deem fair and equitable," are misleading. Suppose a raiyat is induced to agree to an excessive enhancement utterly incommensurate with the advantage derived by the release from the obligation to cultivate a special crop, cannot he avoid the agreement? The avowed reason for enacting section 29 was the helplessness of the raiyat, who, it was feared, might be induced to contract himself out of his just rights. The Legislature could, therefore, scarcely have meant to give him an unlimited freedom to agree to any rent *he may deem fair and equitable.* The addition of the provisos was made by amendment in Council, and probably their language escaped scrutiny. A broad consideration of the whole law of enhancement as allowed by this Act and of the different limitations placed on freedom of contract enacted by it, would lead to the conclusion, that this proviso must be understood only to allow

enhancement by contract commensurate with the advantage gained by the release from the obligation, and not to validate an agreement to pay enhancement utterly in excess of such advantage, and to which the raiyat may be induced to enter without adequate consideration.

Enhancement of rent by suit.

30. The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds (namely):—

(*a*) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same village, and that there is no sufficient reason for his holding at so low a rate;

(*b*) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;

(*c*) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent;

(*d*) that the productive powers of the land held by the raiyat have been increased by fluvial action.

Explanation.—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

Old Acts.—Section 17 of Act X of 1859 and section 18 of Act VIII B. C. of 1869. They were the same, and ran as follows:—

"No raiyat having a right of occupancy shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, namely:—

"That the rate of rent paid by such raiyat is below the prevailing rate payable by the same class of raiyats for land of a similar description and with similar advantages in the places adjacent;

"That the value of the produce or the productive powers of the land have been increased otherwise than by the agency or at the expense of the raiyat;

"That the quantity of land held by the raiyat has been proved by measurement to be greater than the quantity for which rent has been previously paid by him."

It is to be noted that the third ground of enhancement under the old Acts, has now been omitted. Increase of rent for increase of area, not being strictly an enhancement of rent, has now been dealt with separately in section 52, *post*, under which a raiyat is liable to pay additional rent for additional land found by measurement in his possession. The first ground of enhancement under the old Acts remains the first ground under this Act also: and the second ground under the former has now been amplified into the second, third and fourth grounds under the present Act.

No notice of enhancement.—Under the old Acts (secs. 13 and 14, respectively) the service of a notice on the raiyat, specifying the enhanced rent and the grounds on which such rent was claimed, was a condition precedent to bringing a suit for enhancement of rent. Under this Act no such notice is necessary. The reason of abolishing the notice is, that a large percentage of enhancement suits under the old Acts failed, either (1) because it was not proved that notice had been duly served, or (2) because the notice was defective in form: so that a point of mere detail caused delay and impeded the decision of the real question at issue between the parties. The institution of the enhancement suit is, under this Act, notice of enhancement to the raiyat. Under the old Acts, notice of enhancement had to be given three clear months before the end of the agricultural year preceding that for which enhanced rent was claimed. The raiyat was thus given an opportunity to relinquish the land before the end of the year, if he was unwilling to hold at the enhanced rent. This object is fulfilled under this Act, by providing (sec. 154) that a decree for enhancement in a suit instituted during the first eight months of the agricultural year shall take effect from the next agricultural year, and that in a suit instituted during the last four months of such year, from the year next but one following.

It has been asked that, though the express provision of serving a notice has now been omitted, is not the raiyat still entitled to such notice on equitable considerations? The provisions of section 154 having taken account of these equitable considerations, no reason of the notice now exists: and the answer to the question is a clear negative. Nor is notice or demand necessary to perfect the landlord's right of suit. *See* note, *ante*, p. 40.

Clause (a).—Local enquiries held for the purpose in select areas brought out the fact that there existed no such thing as a prevaling rate, and that the rates of rent

in every village were innumerable. This led to the abandonment of the "table of rates" of Bill No. I. The Bengal Government advocated also the abolition of this ground of enhancement for the same reason. But it was replied that, besides this ground of enhancement, there are no other means by which the landlord may recover a just rate of rent from those raiyats who, by reason of relation to the landlord's gomastas and agents, of caste or of bribery, have been allowed to enter and hold at very insufficient rates. This ground of enhancement should, therefore, have been limited to cases of fraud and favoritism. But it has been retained as a general ground of enhancement, because, it was said, it had existed from the time of the Permanent Settlement, and it had been, it was so considered, the most workable ground under the old Acts.

Clause (a). Distinction from the provisions of the old Acts.—This ground of enhancement is much the same as the first ground of the old Acts. But there are three points of difference: (1). Rent could be enhanced by comparison, with the prevailing rate, under the old Acts, *of places adjacent;* under this Act, *of the village.* The area of comparison has thus been narrowed. (2). The words "occupancy-raiyats" now replace "raiyats of the same class" of the old Acts. (3). From enhancements on this ground are excepted cases where there is sufficient reason for the raiyats to hold at a lower rate.

Clause (a). The prevailing rate.—Section 31, clause (*a*), specifies some facts which are to be considered in determining what the prevailing rate is. *See* note under that section for the meaning of the term "prevailing rate."

Clause (a). And there is no sufficient reason for his holding at so low a rate.—The addition of these words has removed a difficulty that existed under the old Acts. There was a difference of opinion as to whether the words "of similar description" referred to the condition of the land at the time of the creation of the tenancy or to that at the time of the suit; and the latter view was more generally taken. (*Sriram Chatterjee* v. *Lakshan Magilla*, Marsh. 379; *Prasanna Kumar Pal* v. *Radhanath De*, 7 W. R. 97; *Obhoy Chandra Sardar* v. *Radha Ballav Sen*, 1 Cal. 549; Contra. *Chowdry Khan* v. *Gour Jana*, 2 W. R. X. 40.) If the comparison was made in reference to the condition of the soil at the time of the suit then in cases where the raiyat improved the land by labor and expenses to a better class, though the landlord could not claim enhancement under the second ground of the old Acts, he could so claim under the first ground. Under the present Act, every consideration, which might take away the liability of the raiyat to pay enhanced rent, should be taken into account in allowing enhancement on the ground of a higher prevailing rate. This upholds the view of the old law taken in the last case, and sets aside the rulings in the first three. In the former, Campbell, J., observed:—

"When a raiyat simply brings jungle land into cultivation, then, after a reasonable period, he is liable to pay the full perganá rates of cultivated land. But if he has to do more than bring into cultivation uncultivated land; if the land which he originally received was not only uncultivated jungle, but was in its then state impracticable for cultivation—if it was salt land, which could only be made sweet by special works of the raiyat, or rock, which could only be made culturable by special labor—then I think that the raiyat who made those works, or expended that special labor, would be entitled to hold at exceptionally low rates. So, again, if, having received ordinary land, he converted it into land of specially high value, then I think he would not be liable to pay exceptionally high rates, but only the ordinary rates paid by land of the same quality, irrespective of the special character impressed on it by himself." (2 W. R. X. 42.)

The introduction of these words has further removed the difficulty that would have arisen by the substitution of "occupancy-raiyats" for "raiyats of the same class" of the old Acts. Jungleburi raiyats' rent could not, under the old Acts, be enhanced to the rate paid by raiyats who incurred no expenses in reclamation (*Noor Mahamad Mandal* v. *Hari Prasanna Roy*, W. R. Sp. X. 75; *Paramanand Sen* v. *Padma Mani Dasi*, 9 W. R. 349; *Haro Prasad Roy* v. *Chandi Charan Bairagi*, Ind. 9 Cal. 505, 12 Cal. 251). The law remains the same under the present Act.

Clause (b).—This clause and clause (2), section 38, substitute a new and sharp procedure for enhancement and reduction of rents in place of the old and complicated one. Under the repealed law such enhancements and reductions were granted, among others, for increase or decrease in the value of the produce. In order to obtain an enhancement or reduction on this ground, the landlord or the raiyat had first to prove an increase or decrease in prices of the actual crops taken off the land; second, to show the quantity and quality of those crops; third, to establish the arithmetical relation of the prices to the produce, after making allowance for many incidental considerations and drawbacks. Finally, he had to work out a proportion statement between these complicated factors at present and in times past. The present Act substitutes for this difficult and complicated process, the simple question of a rise or fall in prices of staple food-crops. That is to say, the single fact of a rise or fall in prices, which was merely the initial fact to be ascertained under the old law, now becomes the only fact to be established. The result is, that enhancements and reductions which were not practicable on this ground will now become practicable. The Act further simplifies the burden of proof, by confining the question to the prices, not of the actual produce of the land, but of certain staple food-crops.

The raiyat may grow what crop suits him best, and irrespective of that, his rent is liable to enhancement or reduction on account of the rise and fall in prices of the

staple food-crops. Under this rule, there will be more enhancements than reductions, for prices of staple food-crops have more generally risen than otherwise. In the Behar districts price of maize is said to have fallen, and there may be reductions of rent under section 38.

Clauses (c) and (d).—Increase in the productive powers has been sub-divided into two classes where alone enhancement of rent can be justified. All other cases almost wholly fall within improvements effected by the Government or by the raiyat. In these cases there is no just ground of enhancement. The two cases on which enhancement is justifiable are those of "fluvial action" and "landlord's improvements," and these have been maintained as grounds on which a landlord can demand an enhancement.

Rules as to enhancement on ground of prevailing rate.

31. Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate—

(*a*) in determining what is the prevailing rate, the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court;

(*b*) if in the opinion of the Court the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure XIV of 1882 by such Revenue-officer as the Local Government may authorize in that behalf by rules made under section 392 of the said Code;

(*c*) in determining under this section the rate of rent payable by a raiyat his caste shall not be taken into consideration, unless it is proved that by local custom caste is taken into account in determining the rate;

and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;

(*d*) in ascertaining the prevailing rate of rent, the amount of any enhancement authorized on account of a landlord's improvement shall not be taken into consideration.

This is new.

Prevailing rate.—The words "prevailing rate," under the old Acts, were on several occasions judicially interpreted. The word "prevailing," observed Mitter, J., "used in section 17 must have some definite meaning attached to it. It means the rate generally prevalent, or the rate paid by the *majority* of the raiyats in the neighbourhood. Now the evidence of twenty raiyats (for that is the number referred to in the present case) simply showing that *they* paid their rents at the rate of Rs. 3 per bigha, does not go to prove the *prevailing* rate, or the rate paid by the majority of the raiyats. I do not mean to say that all the raiyats in the neighbourhood are to be examined, and then the rate paid by the majority of them, is to be found out. But I do mean to say that the evidence given must purport to show the rate paid by the majority; otherwise it cannot be said that the prevailing rate has been established." (*Sadhoo Sing* v. *Ramanugraha Lal*, 9 W. R. 83.) The evidence of three *patwaris*, who put in their jamabandis for corroboration, showing the rate paid by almost all the raiyats, was held sufficient to prove the prevailing rate (*Pryag Lal* v. *Brochman*, 13 W. R. 346). The prevailing rate was held to be the rate paid by so large a majority as to justify one to hold the rent claimed to be the prevailing rate (*Dhunraj Konwar* v. *Ugra Narain Koonwar*, 15 W. R. 2). The adoption of an average rate from different rates given by several witnesses was held to be an incorrect mode of ascertaining the prevailing rate (*Sumeera Khatun* v. *Gopal Lal Tagore*, 1 W. R. 58; *Aud Behari Sing* v. *Dost Mahamad*, 22 W. R. 185.) When enhancement was claimed on the ground of a higher prevailing rate, it was held that the Court must specifically find whether the rate claimed by plaintiffs is actually paid by the neighbouring raiyats, and it would be wrong if the Court gave a decree for what it considered *fair* rent (*Pilaram Kotal* v. *Nanda Kumar Chattaram*, 6 W. R. X. 45).

The rigidity of these decisions seems to be slightly relaxed in favor of the landlords by directing that in determining what is the prevailing rate, the Court

shall have regard to the *rates* generally paid. This relaxation is according to the rulings in *Sheik Dinu Gazee* v. *Mohim Mohan Das*, 21 W. R. 157, and *Tikaram Sing* v. *Sandes*, 22 W. R. 335. In the first case, it was remarked that where a zemindar proved that his lands were held at a rent below their value, he should not be debarred from getting an increase, because a distinctly prevailing rate could not be found on account of the currency of different rates being nearly equal. In such a case it was held the Court was not in error in having taken an average. It will be presently seen that the whole of this decision has not been adopted in this Act. In the second case, the landlord failed to adduce evidence as to the rate paid for similar lands, but he gave evidence as to the rate paid for slightly better lands, the rate of rent allowed, account being taken of the difference, was held to be reasonable.

Rates generally paid.—From the word "rates" being in the plural, it must not be understood that the present Act allows the Courts to strike out an average of different rates current in a village, except in very special cases. "As long as we preserve the words of the present law 'the prevailing rate' and not the average rate, the rulings of the High Court which prohibit the striking of an average except to very small extent in very special cases, would equally apply to the present section; and there is nothing unfair in giving a direction that the Court should look to the prevailing rates. * * * * Say, there are two rates, one of Rs. 5 and one of Rs. 2 merely to strike an average between the two will not be in compliance with either this Act or the old law. But I do think that the class of judgments on which the Judge says—'This man is found to hold at Re. 1; the claim is to have his rent enhanced up to Rs. 2 on the ground of the prevailing rate; and there is a great deal of contradictory evidence as to what the prevailing rate is. I doubt the evidence which makes it out to be Rs. 2, but I find that, except in isolated cases, land of this description is never held under Re. 1-8; therefore, I shall be safe in finding that the prevailing rate is not less than Re. 1-8.' That is the sort of way in which the Courts have frequently given judgments in regard to these matters upon discrepant evidence. And I think rightly so." (Evans in Council).

Suppose, in a village of 50 raiyats, ten pay at Re. 1 per bigha, twenty at Rs. 2 and twenty at Rs. 3. There are three prevailing rates, and the rent of the lowest-paying raiyats cannot be enhanced on the ground of a higher prevailing rate. Suppose, in that village, two pay at Re. 1 per bigha and twenty-four at Rs. 2 and twenty-four at Rs. 3. The rent of the two lowest-paying raiyats may probably be enhanced to Rs. 2-8, an average of the two prevailing rates, the prevalence being of equal extent. Suppose, in that village, two pay at Re. 1, thirty at Rs. 2 and eighteen at Rs. 3.

The rent may be enhanced to Rs. 2 ; and no average may be struck, as the higher rates are not prevalent to the same extent. But the rates of rent in each village are so innumerable, that the cases in which average rates may be struck will be of rare occurrence.

It must be remembered, that the law does not say that the rent is to be enhanced to the limit of any of the prevailing rates. It only says that the rent may be enhanced on the ground that the raiyat pays lower than the prevailing rate. It was proposed (Bill No. II) to limit enhancement on this ground to 8 annas in the rupee. This limitation has subsequently been withdrawn. And it has been left to the Courts to determine in each case what enhancement should be allowed. But the Courts may not decree any enhancement which is under the circumstances unfair and inequitable (sec. 35).

During a period of not less than three years.—It was proposed to incorporate these words in the first ground of enhancement (sec. 30, cl. *a*) so as to form a part of the *definition* of the ground. But the proposal was opposed for the following reason :—" Every lawyer knows that if, into a definition of the ground on which enhancement is to take place, you incorporate a number of things, which the Court may have regard to, you make those things so positively a part of the definition, that, in an appeal on a point of law to the High Court, if the whole of the matters contained in the definition have not been found on evidence, the case will fall to the ground." (Evans in Council.) The words were for this reason not incorporated in clause (*a*) of section 30. And the direction in this section is *not* a hard and fast rule.

The reason of requiring that the prevailing rate should be determined with reference to the rates actually paid during a period of not less than three years before the institution of the suit was explained to be to avoid the danger that arises from the artificial manufacture of rates.

Clause (b).—The following notification has been published with reference to this clause (*Calcutta Gazette*, November 4th, 1885, p. 988) :—

"Under section 392 of Act XIV of 1882, the Lieutenant-Governor has been pleased to make the following rules as to the persons to whom commission shall be issued under the Bengal Tenancy Act.

"Whenever, under sections 31 (*b*) and 158 (2) of the Bengal Tenancy Act, a Court directs that a local enquiry be held under Chapter XXV of the Code of Civil Procedure, the commission shall be issued to such person, not being below the rank of an Assistant or Deputy Collector, as the Collector of the District may, from time to time, select for the purpose.

"The Court shall issue a precept to the Collector requiring him forthwith to nominate a fit person as above, to conduct the enquiry, and the commission shall be issued to the person so nominated."

Clause (c).—The provisions of this clause are based on those of section 20 of the North-Western Provinces Tenancy Act (XII of 1881), which runs as follows:—"In determining under this chapter the rate of rent payable by any tenant, his caste shall not be taken into consideration, unless it is proved that, by local custom, caste is taken into account in determining such rate; and whenever it is found that by local custom or practice, any class of persons by reason, of their having formerly been proprietors of the soil or otherwise, hold land at favorable rates of rent, the rate shall be determined in accordance with such custom or practice."

Clause (d).—Where the rent of other raiyats of the village has been enhanced on the ground of landlord's improvement, the amount of such enhancement should be deducted in ascertaining the prevailing rate. If the landlord wants enhancement for improvements effected, he should claim it on the third ground of enhancement, and not on the first ground. An enhancement on the third ground, it should be remembered, may be reconsidered, if the improvement fails or ceases to produce the estimated effect. But an enhancement on the first ground may not be reconsidered. This clause removes the difficulty which would have otherwise arisen, if the amount of enhancement due to improvement could be taken into consideration both on the third and on the first ground of enhancement. Compare the difficulty under the old law pointed out in the last note to clause (*a*), section 30.

Rules as to enhancement on ground of rise in prices.

32. Where an enhancement is claimed on the ground of rise in prices—

(*a*) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison;

(*b*) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison: provided that, in calculating this proportion, the average prices during the later

period shall be reduced by one-third of their excess over the average prices during the earlier period;

(*c*) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in clause (*a*), the Court may, in its discretion, substitute any shorter period therefor.

Clause (a).—"Formerly it was necessary for the landlord to prove to the Court when the rent was last fixed, in order to be able to enter into any comparison at all. The Court may, under this Act, take any period during the currency of the rent that may be equitable and practicable for comparison. As a rule, in order to eliminate the effect of special seasons, decennial periods will be taken, but the Courts may, if necessary, substitute shorter periods. In order to facilitate the comparison, the Local Government will have to draw up, from the materials which are available to a certain extent, for the last 20 years, statements of past prices, and in future to record prices accurately, publish them for criticism, and finally after revision, publish statements of annual average prices." (Bayley in Council.)

Present rent.—The definition of the second ground of enhancement is, that "there has been a rise in the average local prices of staple food-grains during the *currency of the present rent.*" The following hypothetical cases have been put, and it has been asked—what is the meaning of "present rent"?

(1) A took some land at Rs. 2 per bigha in 1866. His rent was reduced, out of Court, to Re. 1-12 per bigha in 1876, *on the ground of deterioration of the soil.* Is the landlord, seeing in 1886, entitled to enhancement for rise of prices since 1866?

(2) A took land at Rs. 2 per bigha in 1866. His rent was enhanced out of Court, to Rs. 2-4 per bigha in 1885, *on the ground of landlord's improvement.* Is the landlord, seeing in 1886, entitled to enhancement for rise of prices since 1866?

The presumption ordinarily is that, when rent was last adjusted, all the considerations that go to settle the rate of rent were taken into account. This presumption is treated as conclusive under this ground of enhancement. The landlord may not go behind the time when rent was last adjusted. In some cases it may be hard on the landlord. But if the landlord were allowed to go behind the time of the last adjustment, a door would have been opened to much difficulties and complications. The hypothetical questions must be answered in the negative; the landlord may not go behind 1876 or 1885. And "present rent" must be understood in its lexicographical meaning.

Decennial period.—It has been asked whether it is necessary that both the decennial periods required for comparison should be within the currency of the present rent. It does not seem that it is so. What is to be found out is the average prices of the year when enhancement is sought and the average price of another year, selected on equitable and practicable grounds, during the currency of the present rent. If, in finding the former, a decennial period, immediately preceding the year when enhancement is sought, is to be taken, there is no reason why in finding the average prices of the earliest year, if selected, of the currency of the present rent, the decennial period ending with that year, or partly before and partly after that year, should not be taken. But a decennial period remotely anterior to the earliest year of the currency of the present rent cannot be taken, for, that would not give the average prices of any time d uring the currency of the present rent. In other words, the earlier year for which average prices have to be found out, must be within the currency of the present rent; but the decennial period taken to find out such average prices may be within such currency or not.

It has also been asked that where rise in rent has outrun the rise in prices (which is said to be the case in parts of Behar), *e. g.*, where the rise in prices has only been 70 per cent. when the rent has risen 500 per cent., may the Court refuse any further enhancement of rent, till the rise in prices becomes proportional to the rise in rents which has already taken place? The answer to this question will be in the affirmative so long as the landlord cannot satisfy that such further enhancement would not be unfair or inequitable to the raiyat (sec. 35), *i. e.* to say, that such further enhancement is compatible to the raiyat living and prospering. But if the landlord can satisfy that such enhancement is compatible with "fair and equitable rent," he is entitled to enhancement, whether rise in prices has become proportional to the past rise in rent or not.

Clause (a). Equitable and practicable.—The former word shows that the period selected must not be objectionable, *e. g.*, when on account of inundation, drought, scarcity, pestilence or unusually good crop, the prices were abnormally high or low. The latter word shows that it should be a period for which evidence of current prices might be obtained.

Clause (b).—The rule of proportion, enacted by this clause, is in accordance with the ruling in the Great Rent Case. The deduction of one-third is meant to discount the increased cost of cultivation. "We are of opinion that the tendency in this country is for the cost of cultivation to increase in a higher rate than prices. So far as the labor is done by the cultivator's family or by laborers paid in grain (as is mostly the case in India), no benefit under this item can

accrue to the cultivator from increase of prices. On the other hand, as population and prices have increased, pasturage has diminished ; cattle are dearer to buy, dearer to keep, and less remunerative ; manure is dearer, and so is fuel ; and all these elements have to be taken into account. The Local Government proposed to deduct one-half for the increase of prices to cover the increased cost of cultivation ; we recognized the impossibility of asking the Courts to solve the hopeless problem of increased cost in each case, and found it necessary to draw an arbitrary line. We have drawn it one-third." (Report of the Select Committee.)

Clause (c).—In Bill No. II quinquinnial periods were taken for purposes of comparison. This was changed in Bill No. III to decennial periods ; and clause (*c*) was added to provide for cases where decennial periods cannot be taken for the shortness of the period of the currency of the present rent, or owing to the absence of evidence of prices during the longer periods.

Rules as to enhancement on ground of landlord's improvement.

33. (1) Where an enhancement is claimed on the ground of a landlord's improvement—

(*a*) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act ;

(*b*) in determining the amount of enhancement, the Court shall have regard to—

(i) the increase in the productive powers of the land caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the cost of the cultivation required for utilizing the improvement, and

(iv) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor in interest, be subject to reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect.

This is new.

Sub-section 1, clause (a).—Section 80, *post*, provides for the registration of improvements. Under sub-section 3 of that section, the application to register improvements *may* be rejected if it is not presented within one year from the commencement of this Act (*i.e.*, before 31st October, 1886,) if the improvement was made before that time, and within one year from the completion of the improvement, if the improvement is made after the commencement of this Act. There is no right of suit under this section if the improvement has not been registered.

Sub-section 2.—The raiyat must proceed by an *application* to have his enhanced rent reduced again, if the improvement fails or ceases to produce the estimated effect. He cannot bring a *suit* for the purpose (*see* sec. 38). Nor, it would appear, may he urge the ground in defence to a suit for arrears of rent. If, however, the enhanced rent was settled out of Court under section 29, the raiyat may urge that the improvement has failed or ceased to produce the estimated effect, in answer to a suit for arrears of rent. An order under this sub-section may be made to be retro-active from the time when the improvement failed or ceased to produce the estimated effect.

Limitation.—There is no period of limitation prescribed by this Act within which the application under sub-section (2) is to be made. Probably, the raiyat would be entitled to make the application at any time after the improvement has failed or ceased to produce the effect. In *Maharaja Mahtab Chand Bahadur* v. *Chitra Kumari Devi* (16 W. R. 201,) it has been held that a claim for rent being a recurring cause of action, a tenant is entitled to set up against it for any particular year, any right which he has to a deduction, notwithstanding that he has paid full rent for several previous years.

Rules as to enhancement on ground of increase in productive powers due to fluvial action.

34. Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(a) the Court shall not take into account any increase which is merely temporary or casual;

(b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

This is new.

Clause (a).—This clause is in accordance with the rulings, *Krista Mohun Pattar* v. *Hari Sankar Mukerjee*, 7 W. R. 235, and *Abdul Gunny* v. *Battoo Sheikh*, 22 W. R. 350. A casual inundation caused by heavy rainfall and the rivers overflowing their banks would be no ground of enhancement. But a diversion of the course of a river or the opening of a channel which causes annual deposit of fertilizing matter on the soil will be a good ground of enhancement.

Clause (b).—The increase of the productive powers being due to neither the landlord's nor the raiyat's agency, but to natural cause ; the landlord and the raiyat is each allowed to participate equally in the increased profit, except when giving the landlord an equal share of the profit will be unfair and inequitable to the raiyat.

Enhancement by suit to be fair and equitable.

35. Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

Old Acts.—Section 5 of Act X of 1859, section 5 of Act VIII B. C. of 1869.

The law was the same under the old Acts ; though it was popularly, though wrongly, believed that, under the provisions of those Acts, enhancement was to be decreed in every case where the landlord succeeded to prove any one of the grounds of enhancement. It was held in *Noor Mahamad Mandal* v. *Hariprasanna Roy* (W. R. Sp. X. 75), that section 17 of Act X of 1859 did not say that in every case the rate of rent might be enhanced to the prevailing rate, but that rent should not be enhanced except on some one of the grounds specified : that section should always be read with reference to the general provision of section 5 that the rent of an occupancy-raiyat should not be more than what was fair and equitable.

The present section makes the law perfectly clear on the point. The enhancements provided in sections 31 to 34, on the grounds defined in section 30, are all subject to this section. Under its provisions, the Court shall refuse enhancement under whatever ground claimed where the existing rent is already high and an enhancement does not leave enough to the raiyat to live in reasonable comfort. Under section 38, *post*, the raiyat may not sue for reduction of rent on the ground that he has been paying more than the prevailing rent. The raiyat may urge that ground, as well as the grounds of section 38, in defence of an enhancement suit. And the Court is bound to consider those points in order to decide what rent will be fair and equitable.

In *Bama Sundari Dasi* v. *Kaloo Peadah*, 10 W. R. 395, it was held, that although the landlord succeeded to make out some grounds of enhancement, yet a catastrophe in the shape of an inundation having occurred during the year, it was

unfair and inequitable that a higher rent should be paid by the raiyat than what he had paid in the previous year.

As pointed out under section 27, the presumption that existing rent is fair and equitable, does not arise at any time in an enhancement suit against the raiyat. It is always in his favor. The landlord's proving the existence of one or more of the grounds of enhancement does not shift the burden on the raiyat to show that enhancement on those grounds under the provisions of sections 31 to 34 would be unfair and inequitable. The landlord has still to prove what would be a fair and equitable rent.

Power to order progressive enhancement.

36. If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees for any number of years not exceeding five until the limit of the enhancement decreed has been reached.

This is new.

The reason of this section was thus expained :—Although a raiyat might hold land at a low rate for some time, yet when his rent is enhanced, it is not in the interest of the Government or the landlord to reduce at once that raiyat's means of subsistence. What he has to spare from the means for the support of his family is the amount of money he has been in the habit of giving to the cultivation of the holding. If the whole of the enhanced rent is demanded at once, the chances are that his cultivation will be injured, and that he will have to sell his bullocks and to reduce his capital, and it is not desirable to reduce his agricultural resources too suddenly.

Limitation of right to bring successive enhancement suits.

37. (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the second day of March, 1883, or if within the said period of fifteen years the rent has been commuted under section 40, or a decree has been passed under this Act or any enactment repealed by this

Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

(2) Nothing in this section shall affect the provisions of section 373 of the Code of Civil Procedure, XIV of 1882.

This is new.

Sub-section (1).—The provisions of this sub-section are restricted to enhancement suits brought on the first and second grounds of enhancement. Such a suit is barred, if a previous enhancement was obtained in any of the ways specified in this sub-section, or if the previous claim was dismissed on the merits. It is also barred by a previous commutation of rent.

Enhancement suits brought on the third or fourth ground of enhancement are not barred by a previous enhancement.

The provisions of this sub-section are retrospective, as regards enhancement by contract, from the 2nd of March, 1883, and as regards enhancement by suit and commutation, from the 1st of November, 1870.

The second day of March, 1883, was the date on which leave to introduce the Bengal Tenancy Bill into Council was obtained. This sub-section protects raiyats who, after that date, may have been induced to enter into contracts for the enhancement of their rents.

Sub-section (2).—Section 373 of the Civil Procedure Code runs as follows :—"If, at any time after the institution of the suit, the Court is satisfied on the application of the plaintiff (*a*) that the suit must fail by reason of some formal defect, or (*b*) that there are sufficient grounds for permitting him to withdraw from the suit or to abandon part of his claim with liberty to bring a fresh suit for the subject-matter of the suit or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit. If the plaintiff withdraw from the suit or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part. Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others."

A previous suit for enhancement of rent on the first and second grounds of enhancement, withdrawn with permission to sue afresh, would, thus, be no bar to a like suit within fifteen years.

Reduction of rent.

Reduction of rent.

38. (1) An occupancy-raiyat holding at a money-rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise (namely):—

(*a*) on the ground that the soil of the holding has without the fault of the raiyat become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual, or

(*b*) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent.

(2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks fair and equitable.

Old Acts.—Section 18 of Act X of 1859, and section 19 of Act VIII B. C. of 1869.

The sections ran as follows :—

"Every ryot having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the ryot, or if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him."

This section only takes the second ground of reduction of the old law, and divides it into two portions. The first and third grounds of the old Acts both refer to alteration of area, and have been dealt with in section 52.

May institute a suit.—These words now replace the words "shall be entitled to claim" of the old Acts. It would, therefore, appear that the raiyat may not claim reduction of rent, on account of any of the grounds specified in this section, in answer to a suit for arrears of rent. The difference of the language of this sec-

tion and section 52 will be noted. A reduction of rent for decrease of area may still be urged in defence in a suit for arrears of rent.

Under the old Acts, the raiyat was held to be entitled to claim reduction in a suit for arrears of rent (*Mohesh Chandra Dutt* v. *Gungamani Dasi*, 2 Hay, 495; *Afsuroodin* v. *Sorashibala Debi*, Marsh. 558, 2 Hay, 664; *Din Dayal Lal* v. *Thokroo Kunwar*, 6 W. R. X. 24; *Gour Kisore Chandra* v. *Bonomali Chowdry*, 22 W. R. 117). These reported cases, however, all concerned about reduction of rent for decrease of area. In such cases, the raiyat may still claim, as noted above, reduction of rent in a suit for arrears of rent.

It has been argued that section 38 (this section) is a substantive section and only an enabling one. It should, therefore, be not so construed as to disable the occupancy-raiyat to claim reduction of rent in a suit for arrears of rent. But it will be remembered, that under section 24 the occupancy-raiyat is liable to pay only fair and equitable rent. If, therefore, he is entitled to claim reduction in a suit for arrears of rent, there is no reason why he should be restricted in his defence to the grounds on which he may institute a suit for reduction;—why he should not be able to urge that the rent claimed is more than the prevailing rate, and that the prevailing rate being fair and equitable in that case, his rent is unfair and inequitable;—or why he should not be able to urge that a late inundation, or scarcity, makes it unfair and inequitable that he should pay the old rent. Thus, by allowing the raiyat a right to claim reduction of rent in suits for arrears of rent, it comes to this result, that his right to sue for reduction is restricted to the grounds specified in this section, while his right to get reduction in a suit for arrears of rent becomes much more extensive. This could hardly be the intention of the Legislature. Such intention, again, was to simplify suits for arrears of rent, and not to complicate them.

The raiyat may, however, urge the grounds specified in this section, as well as other reasonable grounds in answer to a suit for enhancement of rent.

Not otherwise.—Thus, it will be seen, that while the landlord may claim enhancement of rent on the ground of a higher prevailing rate, the raiyat may not claim reduction on the ground of a lower prevailing rate. Rent, therefore, may be levelled up, but never levelled down. This stereotypes the distinction of the old law between the rights of the landlords and those of the raiyats. Under the old law, payment of rent at a higher than the prevailing rate was held to be no ground for reduction, even though the old Acts contained no prohibitory words like "not otherwise" (*Babu Mandal* v. *Shib Kunwari Barmani*, 21 W. R. 404).

Remission.—Reduction of rent must, however, be distinguished from remission of rent. And the raiyat is entitled to remission, if the landlord got remission of revenue from the Government on condition that he would grant similar indulgence to his raiyats (*Golak Chandra Mytee* v. *Parvati Charan Das*, 15 W. R. 168); such remission may be claimed in defence to a suit for arrears of rent (*Baikanta Puraki* v. *Surendranath Roy*, 1 W. R. 84).

Fraud.—Reduction of rent may not be claimed on the ground of fraud. The tenant's remedy is only the cancellation of the contract (*Shookur Ali* v. *Umala Ahalya*, 8 W. R. 504, *Darimbya Debya* v. *Nilmani Sing Dev*, 5 Cal. 467).

Clause (a).—In *Sheikh Enatulla* v. *Sheikh Elahi Baksh*. W. R. Sp. X. 42, it was remarked: "With regard to the land alleged to have been covered by sand, the Judge of the first Court will have to inquire if that portion was covered by sand and deteriorated thereby or rendered wholly useless; for, if the land has been deteriorated or rendered wholly useless by the act of God, the tenant would be entitled to an abatement."

Clause (b).—Prices of staple food-crops have more generally risen than otherwise, and the tendency also is of further rise. This sub-section will have scarcely any application in Bengal proper. But in Behar, the price of maize, one of the staple food-crops, is said to have fallen: and in that province there may be reductions on this ground. The price of maize is said to have fallen 46 per cent. in Bhagulpore and Patna, and 25 per cent. in Mozufferpore. But these calculations were made on price-lists, the trustworthiness of which may well be doubted. Staple food-crops have to be determined for local areas by Revenue-officers under the rules prescribed by the Local Government under sub-section 7 of the next section. But they have not yet been finally determined.

Sub-section (2).—Sub-section (1) specifies the grounds of reduction of rent, but gives no rules as to what extent rent is to be reduced. Such reduction under sub-section (2) is to be "fair and equitable," *i. e.* to say, the reduced rent should leave the raiyat sufficient to live and prosper. *See* notes under section 24.

Restriction on contract.—A raiyat may not contract himself out of the provisions of this section after the passing of this Act (sec. 178, sub-sec. 3, cl. *f*).

Rent in kind.—There is no provision in this Act for the reduction of rent in kind. The second ground of this section can have no application to such rent from its very nature. Whether rent in kind may be reduced on the ground of a lower prevailing rate, is an open question. Under the old Acts it could not be. There is, however, nothing in the present Act to debar a raiyat from claiming such a reduction. Nor is there anything in the Act to debar an occupancy-raiyat,

paying rent in kind, to claim reduction on the ground of deterioration of soil so as to require much greater labor to enable the raiyat to grow the same quantity of crop. Not to grant reduction in this last case, would be deterring the raiyat from continuing cultivation of such deteriorated land. In commutation of rent under section 40, these grounds would certainly be taken into consideration.

Price-lists.

Price-lists of staple food-crops.

39. (1) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(2) The Collector may, if so directed by the Local Government, prepare for any local area like price-lists relating to such past times as the Local Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area, to which it relates, and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The Local Government shall cause to be compiled from the periodical lists prepared under this section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(6) In any proceedings under this chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this section, and shall presume that the prices shown in the lists prepared for any year subsequent to the passing of this Act are correct, unless and until it is proved that they are incorrect.

(7) The Local Government, subject to the control of the Governor-General in Council, shall make rules for determining what are to be deemed staple food-crops in any local area and for the guidance of officers preparing price-lists under this section.

The Local Government has determined for the present not to prepare price-lists relating to past times owing to the absence of the necessary data. If price-lists be hereafter prepared for such times, they would be only relevant evidence, but there will be no presumption of correctness in their favor.

The rules prepared by the Local Government under this section are as follows :—

1. *Section* 39 (1).—The local areas under this section shall be those entered in Schedule II annexed to these rules, and the mart specified in the same schedule for each local area shall be that at which prices shall be recorded.

SCHEDULE II.

BHAGULPORE DIVISION.

Districts.	Local areas.	Marts at which prices shall be recorded.
MONGHYR	Sudder sub-division	Monghyr.
	Beguserai ditto	Beguserai.
	Jamui ditto	Jamui.
BHAGULPORE ...	Sudder sub-division	Bhagulpore.
	Banka ditto	Banka.
	Muddehpura ditto	Muddehpura.
	Soopole ditto	Soopole.
PURNEAH	Sudder sub-division	Kusba.
	Arrareah ditto	Arrareah.
	Kishengunge ditto	Kishengunge.
MALDAH	District of Maldah	English Bazar.

PATNA DIVISION.

Districts.	Local areas.	Marts at which prices shall be recorded.
PATNA	Sudder sub-division	Patna.
	Barh ditto	Barh.
	Behar ditto	Behar.
	Dinapore ditto	Dinapore.
GYA	Sudder sub-division	Gya.
	Nowadah ditto	Nowadah.
	Jehanabad ditto	Jehanabad.
	Arungabad ditto	Arungabad.
SHAHABAD	Sudder sub-division	Arrah.
	Buxar ditto	Buxar.
	Sasseram ditto	Sasseram.
	Bhabuah ditto	Bhabuah.
MOZUFFERPORE ...	Sudder sub-division	Mozufferpore.
	Seetamurhee ditto	Seetamurhee.
	Hajeepore ditto	Hajeepore.
DURBHUNGA ...	Sudder sub-division	Durbhunga.
	Madhubani ditto	Madhubani.
	Tajpore ditto	Tajpore.
CHUMPARUN ...	Sudder sub-division	Motihari.
	Bettiah ditto	Bettiah.
SARUN	Sudder sub-division	Chupra.
	Gopalgunge ditto	Meergunge.
	Sewan ditto	Sewan.

BURDWAN DIVISION.

BURDWAN	Sudder sub-division	Burdwan.
	Raneegunge ditto	Raneegunge.
	Cutwa ditto	Cutwa.
	Culna ditto	Culna.
MIDNAPORE ...	Sudder sub-division	Midnapore.
	Ghattal ditto	Ghattal.
	Tumlook ditto	Tumlook.
	Contai ditto	Contai.
BEERBHOOM ...	Sudder sub-division	Sudder.
	Rampore Hat ditto	Rampore Hat.
HOOGHLY	Sudder sub-division	Hooghly.
	Serampore ditto	Bhuddessur.
	Jehanabad ditto	Jehanabad.
	Howrah ditto	Mariju.
	Uluberiah ditto	Uluberiah.
BANKOORA ...	Sudder sub-division	Bankoora.
	Bishenpore ditto	Bishenpore.

RAJSHAHYE DIVISION.

District.	Local areas.	Marts at which prices shall be recorded.
RAJSHAHYE	Sudder sub-division	Beauleah.
	Nowgong ditto	Nowgong.
	Nattore ditto	Nattore.
PUBNA	Sudder sub-division	Pubna.
	Serajgunge ditto	Serajgunge.
RUNGPORE	Sudder sub-division	Rungpore.
	Nelphamari ditto	Nelphamari.
	Kurigaon ditto	Kurigaon.
	Gyabanda ditto	Gyabanda.
DINAGEPORE	Dinagepore Munsiffi	Railway Bazar Hât.
	Thakoorgaon ditto	Lahiry Hât.
	Raigunge ditto	Raigunge Hât.
	Phulbaria ditto	Berhampore Hât.
BOGRA	District of Bogra	Bogra.

CHITTAGONG DIVISION.

CHITTAGONG ...	Sudder sub-division	Chittagong.
	Cox's Bazar ditto	Cox's Bazar.
NOAKHOLLY ...	Sudder sub-division	Kalitara Hât.
	Fenny ditto	Panchgachia Hât.
TIPPERAH	Sudder sub-division	Commillah.
	Brahmanberiah ditto	Brahmanberiah.
	Chandpore ditto	Chandpore.

DACCA DIVISION.

DACCA	Sudder sub-division	Dacca.
	Naraingunge ditto	Muddergunge.
	Manickgunge ditto	Manickgunge.
	Moonshigunge ditto	Meerkadim, Munshirhat.
FURREEDPORE ...	Sudder sub-division	Furreedpore.
	Goalundo ditto	Goalundo.
	Madaripore ditto	Madaripore.
MYMENSING	Sudder sub-division	Nasirabad.
	Tangail ditto	Kagmari.
	Jamalpore ditto	Jamalpore.
	Kishoregunge ditto	Kishoregunge.
	Netrokona ditto	Netrokona.
BACKERGUNGE ...	Sudder sub-division	Burrisal.
	Patuakhally ditto	Patuakhally.
	Perozepore ditto	Perozepore.
	Dakhin Shabazpore ditto	Bhola.

PRESIDENCY DIVISION.

Districts.	Local areas.	Marts at which prices shall be recorded.
MOORSHEDABAD ...	Sudder sub-division	Berhampore.
	Lalbagh ditto	Lalbagh.
	Kandi ditto	Kandi.
	Jungypore ditto	Jungypore.
NUDDEA	Sudder sub-division	Goaree.
	Ranaghat ditto	Ranaghat.
	Meherpore ditto	Kaliabazar.
	Chooadanga ditto	Chooadanga.
	Kooshtea ditto	Bahadurkhali.
JESSORE	Sudder sub-division	Jessore.
	Narail ditto	Narail.
	Magoora ditto	Magoora.
	Jhenidah ditto	Sulkupah.
	Bongong ditto	Bongong.
24-PERGUNNAHS ...	Sudder sub-division	Chetla Hât.
	Baraset, Dum-Dum, and Barrackpore sub-divisions	Baraset.
	Diamond Harbour sub-division ...	Mogra Hât.
	Buseerhat sub-division	Baduria Baraon.
KHOOLNA	Sudder sub-division	Khoolna.
	Satkhira ditto	Satkhira.
	Bagirhat ditto	Bagirhat.

2. *Section* 39 (7).—The Collector, after such enquiry into the relative extent to which particular food-crops are grown in his district, as he may think necessary, shall cause a notice to be affixed in his office and in the sub-divisional office, specifying the food-crop or food-crops which in his opinion is or are most extensively grown in each local area. The notice shall distinguish, as far as may be practicable, between crops grown on high lands and crops grown on low lands; and shall fix a day, not being later than 15 days after the publication of such notice, on which objections will be taken into consideration. On the day so fixed, the Collector shall take into his consideration the objections, if any, to the enumeration of staple food-crops proposed in the notice, and shall report his opinion thereon to the Board of Revenue. The Board of Revenue shall submit the Collector's opinion to the Local Government, with such remarks as may seem to them necessary. The Local Government, after considering the reports of the Collector and the Board of Revenue, shall determine and notify in the *Calcutta Gazette* what shall be deemed staple food-crops in each local area.

3. Price-lists of staple food-crops shall be prepared on two market days in

the month at intervals of not less than ten days. Such market days shall be selected by the Collector, subject to the control of the Board of Revenue.

4. The price recorded for each staple food-crop shall be the prevailing retail price at which that crop was actually sold in the mart to which the price-list refers on the days prescribed in the last preceding rule.

5. Price-lists shall ordinarily be prepared by a gazetted officer, not below the rank of a Sub-Deputy Collector. But in special cases where a Sub-Deputy Collector is not available, the Collector, with the sanction of the Commissioner, may authorize a canoongoe to prepare the lists.

6. Every officer charged with the preparation of price-lists shall keep a record showing, as far as practicable,—

(a) the date of his visit to the mart, at which prices are to be recorded;

(b) the names of vendors and purchasers, the quantities sold, and the price thereof, for any sales effected in his presence.

7. When price-lists are prepared at the sudder sub-division by an officer other than a Covenanted Deputy Collector, or at other sub-divisions by an officer subordinate to the Sub-Divisional Officer, they shall be submitted to the Covenanted Deputy Collector, or a Deputy Collector specially nominated by the Collector for the purpose, or Sub-Divisional Officer, as the case may be. Such officer shall scrutinize the lists; he may call for explanations and cause manifest errors to be corrected; and, having satisfied himself of the accuracy of the lists, he shall countersign them.

8. The price-lists shall be published for not less than one week at the marts to which they respectively refer, at the Collector's or sub-divisional office, and at every police station and munsifi in the local area.

9. After the expiry of the term of publication of the price-lists in the mart to which they refer, as mentioned in the last preceding rule, the lists shall be submitted to the Board with any objections made to them, and with the opinions of the officers who prepared and countersigned them, and of the Collector, on such objections.

Commutation.

Commutation of rent payable in kind.

40. (1) Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways, and partly in another,

either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

(2) The application may be made to the Collector or Sub-Divisional Officer, or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.

(3) On the receipt of the application the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination the officer shall have regard to—

(*a*) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity;

(*b*) the average value of the rent actually received by the landlord during the preceding ten years or during any shorter period for which evidence may be available; and

(*c*) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges.

(5) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.

(6) If the application is opposed, the officer shall consider whether under all the circumstances of the case it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.

This is new.

"Tithes were formerly paid in kind, *i. e.*, the person entitled to the tithe received a tenth of the crop. This system was found to be vexatious in the extreme and productive of disputes and litigation, just as the system now in force in parts of Behar produces constant irritation and oppression. It was finally decided to put an end to a source of so much bitterness and want of charity: and the following rules were laid down for the conversion of tithes into a money-payment:—(1) Find the gross average money-value of the tithe of a parish or district for seven years ending on Christmas-day of 1835. (2) Apportion the amount of that value upon the lands of the several tithe-payers. (3) Ascertain how much corn could be purchased with such amount: one-third of it laid out in wheat, one-third in barley, and one-third in oats at the average price of corn for the seven years preceding 1835. (4) In every future year, make payable the price of the same quantity of wheat, barley and oats at their average prices, founded on a like calculation of the official returns for the seven years ending at each preceding Christmas."—D. 250-1.

Raiyats at fixed rates.—It has been asked whether raiyats at fixed rates, when their rents are payable in kind, may apply under this section to have them commuted to money-rents. The answer would seem to be that, if these raiyats are occupancy-raiyats as well, they may so apply; and this section applies to them just as much as section 21 under which they at once acquire the right of occupancy in any land of the village let to them. But if they are not occupancy-raiyats as well, but their right to hold at fixed rates depends only on contract, they may not apply for commutation.

Restriction on contracts.—An occupancy-raiyat may not contract himself out of the provisions of this section after the passing of this Act. Section 178, sub-section (3), clause (*g*).

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

THE position of the non-occupancy raiyat under the old law was as follows:—(1) His rent was at the mercy of the landlord, except in the few cases where he was allowed to stay over after expiry of the term, when he could be made to pay only fair and equitable rent. (2) He could be ejected for arrears of rent; he could also be ejected at the will of the landlord after expiry of the lease; or, if he had no lease, at any time after service of notice to quit. (3) His rent could be enhanced by contract, of which writing or registration was not compulsory; it could also be enhanced by suit, and that as often as the landlord liked.

Under the present law his position is :—(1) His initial rent is at the mercy of the landlord. If he *is allowed* to stay over after the expiry of the initial term and cannot agree with the landlord as to the amount of rent, he may be made to pay only fair and equitable enhancement. (2) His liability to ejectment for arrears of rent remains the same. He may be ejected after expiry of the initial lease, if it is a registered one. But this must be in a suit brought within six months after the expiry of the term of the lease. He is also liable to be ejected on the expiry of the judicial lease. (3) His rent may be enhanced by contract; but the contract must be a registered one. His rent may also be enhanced by suit; and the enhanced rent will remain unchanged for five years.

Most of these advantages are, as pointed out by a member of the Select Committee, more apparent than real. For though it is provided that the enhanced rent settled by suit will last for five years, the provision will be scarcely operative. The landlord will not generally demand an enhancement formally, but he will threaten to eject the raiyat on expiry of lease. And the raiyat will agree to pay any rent rather than face the alternative of ejectment from his holding. The landlord will thus be able to exact from the non-occupancy-raiyat the highest rent that the land can possibly bear: and the threat of ejectment may be repeated year after year. Then, again, though non-occupancy-raiyats, who have been in possession for seven years before the commencement of the Act, and who have no registered lease, will have an opportunity to acquire the occupancy status, unless they refuse to hold on at fair and equitable enhancement, those who have held for a lesser number of years are liable to be ejected before they acquire that status. The Act leaves it in the power of the landlord to rack-rent the non-occupancy-raiyats of the latter class during eleven years, to evict them on the twelfth, and then to re-admit them and begin the process again.

It was proposed by the Rent Commission and the Bengal Government to afford protection to raiyats who have held for three years or more. But the proposal did not meet with the approval of the India Government. They proposed to attain the same object, however, by providing that the right of occupancy should attach to all raiyati (as opposed to the proprietor's private) lands, irrespective of the period of the holding. That proposal was in its turn disapproved by the Secretary of State for India, and therefore abandoned. The original Bill, introduced in Council in March, 1883, provided safeguards against arbitrary rent and arbitrary eviction (secs. 89, 90 and 119);—the rent could not be more than five-sixteenths of the produce of the land in staple food-crops. But these safeguards were taken away by the Select Committee.

Application of this Chapter limited.—The provisions of this Chapter are subject to those in sections 116 and 180. Section 116 provides that "nothing in Chapter VI shall apply to a proprietor's private lands where any such land is held under a lease for a term of years, or under a lease from year to year." Where, therefore, a proprietor's private lands are held otherwise than under a lease for a term of years, or from year to year, the provisions of this Chapter apply. Section 180, further, provides, *inter alia*, that "Chapter VI shall not apply to raiyats holding land under the custom of *utbandi* in respect of land held by them under that custom."

Application of Chapter.

41. This Chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy-raiyats.

The non-occupancy-raiyat was called in Bill No. I, the "ordinary raiyat." But the name was subsequently changed; because the non-occupancy-raiyat is not the ordinary raiyat, the ordinary raiyat being the *khudkhast*.

The non-occupancy-raiyat has been called the "tenant-at-will"—a name borrowed from the English Law. Under the present Act, although his initial rent and his liability to ejectment on the expiry of an initial registered or a judicial lease depend on the *will* of the landlord, he has still a few rights which depend on the provisions of the law, and not on the will of the landlord.

Initial rent of non-occupancy-raiyat.

42. When a non-occupancy-raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

Old Acts.—Section 8 of Act X of 1859; section 8 of Act VIII B. C. of 1869.

The initial rent of the non-occupancy-raiyats, thus, remains a competitive rent. In this matter, however, the occupancy-raiyats are also in the same position. The initial rent of occupancy-raiyats, *i. e.*, of settled raiyats in new lands let to them, is also a competitive rent under this Act. It was once proposed (Bill No. 1) to limit the former to five-sixteenths of the price of staple food-crops that may be grown in the land, and the latter to one-fifth of such price. But these maxima were ultimately abandoned.

Admitted to the occupation of land.—This refers to the initial admission (sec. 47). So that if the raiyat is allowed to hold on after the expiry of the first term, the landlord may not compel him to pay any rent he likes. If the

raiyat does not agree to the rent demanded, the landlord may proceed under section 46 to have a fair and equitable rent settled by Court, which will last for five years. But, if the initial lease is a registered one, the landlord may compel the raiyat to agree to any rent he demands; for, if the raiyat does not agree, the landlord's right to eject him under clause (*c*) of section 44 is absolute.

Conditions of enhancement of rent.

43. The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 46:

Provided that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

This is new.

There is no limit to the enhancement of a non-occupancy-raiyat's rent, nor is any period prescribed during which the enhanced rent is to remain unaltered. The proviso gives the force of registration to a non-registered contract which has been acted up to for a continuous period of three years.

The difference between the non-occupancy-raiyat's contract of enhancement and the occupancy-raiyat's should be noted. The latter, though the stronger and, therefore, more able to protect his own interests, may not contract any enhancement higher than two annas in the rupee of the existing rent and the contract fixes the rent for fifteen years, while the former, the weaker, is unprotected in both directions. This result is due to a misconception of the true meaning of section 52 of Regulation VIII of 1793, under which the proprietor was erroneously supposed, to have the right "*to let*" the remaining lands in agricultural leases under whatever terms he liked. As pointed out, *ante*, p. 12, "*to let*" in that section referred only to farming leases and *not* to agricultural leases.

Grounds on which non-occupancy-raiyat may be ejected.

44. A non-occupancy-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise (namely):—

This is new.

This section is subject to the provisions of section 89 which provides that "a tenant shall not be ejected from his tenure or holding except in execution of a decree," *i.e.*, except by suit.

(*a*) on the ground that he has failed to pay an arrear of rent;

This clause is subject to the provisions of section 66 which provides :— When an arrear of rent remains due at the end of the Bengali year where that year prevails, or at the end of Jyet where the Fasli or Amli year prevails, the landlord may sue for ejectment ; the decree, passed in favour of the plaintiff, shall specify the amount of the arrear and of the interest (if any) due thereon ; and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or when the Court is closed on the fifteenth day, on the day on which the Court re-opens : the Court may, for special reasons, extend the period of fifteen days mentioned in that section.

See notes under section 66.

(*b*) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;

This clause is subject to the provisions of section 155, which provides that (1) a suit for ejectment on the ground of misuse or breach of contract carrying forfeiture shall not lie, unless a notice has been served on the tenant specifying the misuse or breach and requiring the tenant to remedy the same and pay compensation, and unless the tenant has failed to comply with the request; (2) the decree for ejectment shall specify the amount of compensation, and declare if the breach or misuse is capable of remedy and fix a period (which may be extended) to pay the compensation and remedy the breach; and (3) that the tenant shall not be ejected if he pays the compensation and remedies the breach.

Section 76 declares what shall be presumed "improvements," and among them are the construction of wells, tanks and water-channels, the preparation of land for irrigation, the drainage, the reclamation of waste land, and the erection of suitable dwelling-houses and out-offices. Section 79 provides that a non-occupancy-raiyat shall be entitled to construct, maintain and repair a well, and to erect a suitable dwelling-house with out-offices ; but he shall not be entitled to make any other improvement without the landlord's permission, except when the landlord fails or neglects to comply with a written request to make such other improvement.

(c) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;

The representative of the zemindars in the Legislative Council said, that "having an absolute right of ejecting a non-occupancy-raiyat on the expiry of the term of his lease, the landholder will, in every case, grant short-term leases, with a view to protect his interests, and thus reduce non-occupancy-raiyats to mere tenants-at-will." But in spite of that danger, this ground of ejectment has been retained; because, it was said, it was only fair that the landlord should be able to give a new raiyat a period of trial to ascertain if he was likely to be a satisfactory raiyat before establishing him permanently, and further, because it was contended, the omission of this ground would efface the distinction between non-occupancy and occupancy-raiyats.

This clause is subject to the provisions of the next section under which the landlord may not sue for ejectment, unless he has served a notice not less than six months before the expiry of the lease; nor may he sue after six months from the expiry of the term.

This clause is limited in its application to the case of the expiration of the initial lease (sec. 47); and such lease must be a registered one. A non-occupancy-raiyat, who is admitted to land without a registered lease, cannot be ejected under the provisions of this clause. He is, therefore, in a better position than a non-occupancy-raiyat with a registered lease, as regards the liability to ejectment. The under-raiyat, without a written lease, is similarly in a better position with regard to ejectment than one with a written lease (sec. 48).

(d) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 46, or that the term for which he is entitled to hold at such a rent, has expired.

This clause contains two grounds of ejectment: (1) refusal to pay the judicial rent, and (2) expiry of the judicial lease. A suit for ejectment on the latter ground is subject to the provisions of the next section, and six months' notice is a necessary preliminary.

Notice before ejectment.—It will be seen that to perfect the landlord's right to sue for ejectment on the ground of (1) misuse or breach of condition, (2) expiry of the initial registered lease, and (3) expiry of a judicial lease, the service of a notice of ejectment is a necessary preliminary. Of the two other grounds, in

arrears of rent, the raiyat gets an opportunity to escape ejectment by paying up within fifteen days of decree; and when he refuses to agree to the judicial rent, he takes the consequence with full knowledge.

Conditions of ejectment on ground of expiration of lease.

45. A suit for ejectment on the ground of the expiration of the term of a lease shall not be instituted against a non-occupancy-raiyat, unless notice to quit has been served on the raiyat not less than six months before the expiration of the term, and shall not be instituted after six months from the expiration of the term.

This is new.

The notice, under this section, is necessary in cases of ejectment under the third (sec. 44, cl. *c*), and the fifth ground (sec. 44, cl. *d*) of ejectment. A notice under section 155 is necessary under the second (sec. 44, cl. *b*) ground of enhancement.

The Local Government has framed the following rule for service for a notice under *this* section :—

"*Section* 45.—Notice to a raiyat to quit under this section shall be served through the Court having jurisdiction to entertain a suit for ejectment from the holding in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, and shall be subject to the same process-fee."

This section now definitely settles the period of notice to which the non-occupancy-raiyat is entitled, and the time when such notice should expire. The rulings under the old Acts did not settle that point definitely. It was settled, that the non-occupancy-raiyat was entitled to a reasonable notice. What was reasonable notice was, however, left to be decided in each case according to the particular circumstances and the local customs as to reaping crops and letting lands (*Janu Mundar* v. *Braja Sing*, 22 W. R. 548; *Rajendra Nath Mukherjee* v. *Rasidar Rahman Khandkar*, 25 W. R. 329; *Jubraj Roy* v. *Mackenzie*, 5 Cal. 231; *Ram Ratan Mandal* v. *Nrityakali Dasi*, Ind. 4 Cal. 339; *Prasanna Kumari Devi* v. *Ratan Bepari*, Ind. 3 Cal. 696; *Jagat Chandra Roy* v. *Rup Chand Chang*, Ind. 9 Cal. 48). And it was held, in a recent case, that these rulings did not lay down any rule that the notice should expire at the end of the prevailing year (*Radha Gobinda Kooer* v. *Rakhal Das Mukherji*, Ind. 12 Cal. 82). These rulings are no longer law, and six months' notice to expire with the expiry of the term of the lease is now necessary for ejectment on the ground of expiry of lease. As to what notice is necessary for ejectment for misuse or breach of condition, *see* notes under section 155.

46. (1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy-raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the raiyat has within three months before the institution of the suit refused to execute the agreement.

Conditions of ejectment on ground of refusal to agree to enhancement.

(2) A landlord desiring to tender an agreement to a raiyat under this section may file it in the office of such Court or officer as the Local Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner, and when it has been so served it shall, for the purposes of this section, be deemed to have been tendered.

(3) If a raiyat on whom an agreement has been served under sub-section (2) executes it, and within one month from the date of service files it in the office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a raiyat under sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the raiyat does not execute the agreement and file it under sub-section (3), he shall be deemed for the purposes of this section to have refused to execute it.

(6) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that

rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment under the conditions mentioned in the last foregoing section, unless he has acquired a right of occupancy.

(8) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by raiyats for land of a similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

Sub-section (2). May file.—The landlord may, at his option, serve the agreement on the raiyat privately without the intervention of the Court. But the difficulty in proving private service is likely to induce the landlords generally to serve it through the Courts. The Local Government has framed the following rule under this sub-section :—

"*Section* 46 (2).—The agreement under this section shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the raiyat in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court."

Sub-section (4).—The Local Government has framed the following rule under this sub-section :—

"*Section* 46 (4).—The notice under this section shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court."

Sub-section (6).—The suit should be instituted within three months of the raiyat's refusal to execute the agreement. The raiyat may, within one month (sub-sec. 3) from the date of the service of the agreement, accept the agreement. The landlord, therefore, must sue within four months of the date of the service,

if the agreement is served through the Court. But, if the agreement is served not through the Court, he must sue within three months of such service, because the raiyat is not allowed any time in that case to accept the agreement.

Sub-section (7).—The five years from the date of agreeing to the rent judicially determined may expire on varying dates : and the ejectment on expiry of the term of five years may take place during any month of the agricultural year. If at the time when the ejectment is to take place, either on account of the expiry of the term, or because the raiyat refuses to accept the judicial rent, there is a crop on the land, the raiyat is entitled, at the option of the landlord, to continue in possession till the crop is gathered or to get compensation ; so also, if the land has been prepared for sowing, he is entitled to compensation (sec. 156). And the Court at the time of passing the order of ejectment shall determine the amount of compensation to be paid.

Sub-section (8).—Such a decree, under the provisions of sub-section (10), takes effect from the end of the agricultural year. *See* note under the definition of "agricultural year" (*ante*, pp. 22-23). The raiyat, who is to be ejected, will, in most cases, forbear to cultivate the land when ejectment is imminent. There is no time given before which the raiyat must agree to the rent judicially fixed. The wording of the sub-section indicates that the decree will be an absolute one, and the raiyat must agree or refuse before the decree is passed.

It will be only equitable to give the raiyat a reasonable time to make up his mind to accept or refuse to hold on at the judicial rent. It will be hard to make the raiyat choose then and there. Similarly, the landlord is equitably entitled to get a reasonable time to choose if he shall enter possession at once and pay compensation, or allow the raiyat to hold on till he has gathered the standing crop.

Sub-section (9).—The rents, to which the Court is directed to have regard to in determining fair and equitable rent, are what are generally paid by *raiyats*. It will be noticed that the raiyats are not limited to the non-occupancy-raiyats. In fact, there are so few non-occupancy-raiyats, that a direction to have regard to their rents would have been useless. For the meaning of "fair and equitable," reference is requested to note under section 24. The judicial rent must leave, where possible, enough to the raiyat that he may live and prosper. But as there is no provision to reduce the rent of the non-occupancy-raiyat, except for alteration of area (sec. 52), it is difficult to see how the judicial rent is always to be "fair and equitable." These words will save the non-occupancy-raiyat from enhancement, but they do not protect him against existing excessive rent.

Though the Court is to have regard to the existing rent of other raiyats

(including occupancy-raiyats) for land of a similar description and with similar advantages in the same village, it is to be remembered that there is no presumption that such existing rents are fair and equitable. The presumption of section 27 is restricted to an enhancement suit and arises against the landlord who claims enhancement. It does not arise against all the world; nor in other suits. The result is that the Court may not settle any rent, under this section, in excess of the existing rent, unless such enhanced rent be such as to allow the raiyat to pay it and live in reasonable comfort.

Rulings under the repealed Acts.—It was once supposed that, under the old Acts, the landlord was entitled to the highest rack-rent from the non-occupancy-raiyat who was allowed to hold on after expiry of term and that on any ground, reasonable or otherwise (*Kubir Sardar* v. *Goluk Chandra Chakravarti*, 3 W. R. X. 126; *Maniraddin* v. *Kennie*, 4 W. R. X. 45; *Gopal Lal Thakur* v. *Badaraddin*, 7 W. R. 28). But these rulings were set aside by the Full Bench ruling in *Backranath Mandal* v. *Benodram Sen*, 1 Beng. F. B. 25. In this case Peacock, C. J., remarked: "It was contended in argument that the landlord may enhance the rent of a ryot not having the right of occupancy to any amount he pleases, and may specify any ground he pleases for such enhancement; and that he is not bound to prove that any of such grounds exist, and that it is for the ryot to prove that no such ground exists. If such an argument were tenable, a landlord may give notice that he intends to enhance to some exorbitant amount, upon the ground that he is a grasping, oppressive landlord, having no regard for justice or fair dealing, and for the interest of any one except himself. It might be difficult, if not impossible, in many cases, for a ryot to disprove the ground alleged, by showing that the landlord was not a person of that description." It was held in this case that the landlord could not compel the non-occupancy-raiyat to pay more than a reasonable rent, and that the onus of proving the existence of the grounds of enhancement was upon the landlord. The decision was in accordance with the earlier rulings in *Stalkartt* v. *Bharat Lal*, W. R. Sp. X. 115, and *Jean Lal Jha* v. *Kalinath Jha*, 5 W. R. X. 41, and has since been the law on the point. In *Pitambar Karmakar* v. *Ramtaran Roy* (10 W. R. 123), the landlord was allowed an enhancement of the rent of a non-occupancy-raiyat arrived at on considerations that the land was situate on the banks of a navigable river, and that a Government road had been opened in the neighbourhood.

Explanation of "admitted to occupation."

47. Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purposes of

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this chapter, notwithstanding that the lease may purport to admit him to occupation.

This is new.

The landlord, thus, may not demand any rent he pleases at the time of renewing a lease ; nor may he eject on the ground of expiry of a voluntary lease other than that of the initial registered one.

Other incidents of non-occupancy-tenancy.

This Act does not enact any express provisions about the non-occupancy-raiyat's right to sublet, about his right to transfer his holding, and about the inheritability of such a holding.

Non-occupancy-raiyat's right to sublet.—Section 85, *post*, which provides for subletting, uses the generic word "raiyat." This presumes that a non-occupancy-raiyat may sublet. Section 44, again, does not make subletting a ground for ejectment. It would thus appear that a non-occupancy-raiyat has a right to sublet.

Inheritability of a non-occupancy-holding.—The Act is silent about such inheritability. Section 20, sub-section (3), provides only that, when a non-occupancy-holding has been inherited by a raiyat, he is entitled to add the period during which his predecessor held in order to acquire the status of a "settled raiyat." The question, therefore, arises whether a non-occupancy-holding is necessarily inheritable. It may, no doubt, be inheritable by custom or usage. It would also appear that where there is no custom or usage, the holding is inheritable. Death of the non-occupancy-raiyat is, under this Act, no ground of determination of the tenancy ; so, there is scarcely any reason why the holding should not be inheritable for the remainder of the term of a registered or a judicial lease. And, if inheritable for the remainder of a term, there is scarcely any reason why it should not be inheritable when the tenancy is held without a lease.

Non-occupancy-raiyat's right to transfer.—A non-occupancy-raiyat may transfer his holding when there is a custom or usage to do so. Section 178, sub-section (3), clause (*d*), makes such right independent of any contract to the contrary made after the passing of this Act. But where there is no custom or usage, it would appear that a non-occupancy-raiyat may not transfer his holding.

CHAPTER VII.

UNDER-RAIYATS.

UNDER-RAIYATS are under this Act in a worse position than they were under the old law. The protection regarding rent in section 48—that the lessor cannot recover in Court more than a fractional limit above the head-rent—is only a nominal one. As long as there is arbitrary eviction, there can be no protection against arbitrary rent. By a threat to evict the raiyat the landlord will always be able to get the highest competitive rent out of Court, for the under-raiyat will much rather pay such rent than face the alternative of ejectment. To avoid coming to Court the landlord will demand and receive payment in advance when the lease is for a short term. And even in case of a registered lease for the longest term of nine years, the landlord may reserve by way of *salami*, or bonus, all that he cannot recover by suit as rent.

It was admitted in Council that this Chapter is the most unsatisfactory part of the whole Act, and cannot in any way be considered a final settlement of the rights of the under-raiyats. Bill No. I proposed to include raiyats at fixed rates among tenure-holders, thus giving the tenants under them all the rights and privileges of "raiyats." Bill No. II went further and proposed to include among tenure-holders all raiyats, whether at fixed rates or otherwise, who sublet more than half the lands of their holdings except under disability; tenants under them would, therefore, have acquired the status of "raiyats." But this provision was so complicated in nature requiring an inquiry into the area of the whole holding, the area sublet to different persons and the existence of the disability, that it was given up. But no better provision has been substituted for the protection of the under-raiyats, than the presumption in section 5, sub-section 5, that a tenancy of more than 100 bighas is to be taken as a tenure till the contrary is shown. This presumption, again, has been made *rebuttable* instead of *conclusive* as recommended by the Rent Commission. Under Bill No. I the limit of the under-raiyat's rent was fixed at five-sixteenths of the produce of the land in staple food-crops (sec. 119). But that provision fell through along with those regarding the maximum rent of the occupancy and the non-occupancy-raiyat.

Limit of rent recoverable from under-raiyats.

48. The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same (namely):—

(*a*) when the rent payable by the under-raiyat is payable under a registered lease or agreement—fifty per cent.; and

(*b*) in any other case—twenty-five per cent.

This is new.

This section enacts a restriction on contracts; and its object is to discourage subletting. No contract is enforceable which reserves more rent than what is allowed under this section. It has been asked—whether it restricts only contracts made after the commencement of this Act? or does it affect, as well, contracts entered into before such commencement? The wording of the section is clear. It does not save any existing contracts, and therefore must be construed to affect them. This and the next section seem to address the subletting raiyat and say:—"Eject the under-raiyat, you have every facility to do so, and cultivate the land yourself. If you do not choose to cultivate yourself, the law, at least, shall not assist you to recover by suit more than such a percentage over the rent you pay. The idle annuitants on land are already a long roll, and if you want to add another number to it, your income shall not be more than this percentage."

As already pointed out (pp. 20 and 21), if a higher return is reserved than the fractional limit allowed by this section, such return is still "rent" under this Act. For, this section only restrains the recovery of such return through the Courts, but does not make the payment of such return illegal. Such return, therefore, remains to be lawfully payable; and section 75, *post*, has no application.

Holding at a money-rent.—It is not clear whether these words are meant to qualify the word "landlord" or the word "under-raiyat." If the words are connected with "under-raiyat," subletting *on money-rents alone* is discouraged. And the raiyat-landlords are left free to make any contracts on as high produce-rents as they like with their under-raiyats. The effect of this would be that subletting would not be discouraged at all; but subletting on money-rents would be altered into subletting on produce-rents. This could scarcely be the intention of the Legislature. It is likely, therefore, that the proper construction is to connect these words with "landlord." This seems the more reasonable, as it is only rarely that raiyats on produce-rents sublet their lands. If the rent payable by an under-raiyat be in kind, the Court shall have to calculate what rent in kind would be equivalent to the head-rent and add twenty-five or fifty per cent. as the case may be.

Apportionment.—When a raiyat sublets only a part of his holding, which is the usual case, the Court shall have, *in limine*, to apportion the head-rent to the part sublet. In doing so, the quality of the different plots of the raiyat's holding shall have to be ascertained, as well as their advantages. This will gene-

rally be a complicated and difficult inquiry, and cannot be expected to be always satisfactorily performed.

Restriction on ejectment of under-raiyats.

49. An under-raiyat shall not be liable to be ejected by his landlord, except—

(*a*) on the expiration of the term of a written lease;

(*b*) when holding otherwise than under a written lease, at the end of the agricultural year next following the year in which a notice to quit is served upon him by his landlord.

If the under-raiyat holds under a written lease, registered or not, he may under clause (*a*) be ejected without notice on the expiry of the term of the lease; if he desires to continue, he must enter into a fresh contract with the landlord. But if he holds without any written lease, he is entitled under clause (*b*) to have at least one full year's notice before ejectment.

Other grounds of ejectment.—Though this section says that an under-raiyat shall not be ejected *except* as provided, it must not be understood that an under-raiyat is not liable to ejectment on any other ground. Section 66 provides that a tenant not excluded by that section—and an under-raiyat is not excluded—is liable to ejectment for arrears of rent in execution of a decree. Then, again, suppose an under-raiyat succeeds to get a nine years' registered lease from his landlord, and then commences destructive waste on the land. Is the landlord limited to the remedy by a suit for damages or by a suit for injunction, and may he not sue for ejectment? When the landlord (*i. e.*, the raiyat) may be ejected by his landlord on that ground, it hardly stands to reason that he may not sue to eject his tenant. For, in that case, the inferior tenant would be given a higher right than the superior one.

That this section, though in form an exhaustive one, is not really so, is proved from the existence of section 66. This section and section 66 taken together would also appear not to exhaust the grounds on which an under-raiyat may be ejected. It would appear that he is liable to ejectment on every other ground on which his landlord is liable to be ejected, *i. e.*, he may be ejected for misuse, or for breach of contract carrying forfeiture.

Ejectment by suit.—Section 89 provides that no tenant shall be ejected from his "tenure" or "holding" except in execution of a decree. "Tenure" or "holding" does not strictly include an under-raiyat's interest in land. But "holding" in that section, as in some other sections, is probably meant to include an under-raiyat's tenancy. Assuming that it does not so include, and that the landlord may eject, on

the two grounds mentioned in this section without suit, it must be remembered that if a landlord ejects an under-raiyat *without* suit, the under-raiyat may recover possession under section 9 of Act I of 1877, if he brings a suit for the purpose within six months of his ejectment (*Jonardon Acharjee* v. *Haradhan Acharjee*, 9 W. R. 513, Beng. F. B. 1020). For arrears of rent, or for misuse, or for breach of contract, he cannot be ejected except by suit under the provisions of sections 66 and 155.

Notice.—When the under-raiyat holds without a written lease, he is entitled to have at least one full year's notice. There is no provision, however, to have such a notice served through the aid of the Collector or the Civil Court. The landlord of an under-raiyat has, therefore, no right to have the notice so served. The difficulty of proving the service of notice is immense; and the under-raiyat, who holds without written lease, will generally deny notice to escape from eviction. But if the under-raiyat executes a kabulyat, his right to get notice is gone. The under-raiyat, where he is strong, will execute no lease and continue to hold on; the raiyat will not be able to recover more than the legalized rent; nor will he, in the majority of cases, be able to eject, just as the landlord could not, in most cases, enhance the rent of the raiyat under the old law.

Other incidents of the under-raiyat's tenancy.

This Act is silent about the under-raiyat's right to acquire a right of occupancy, to transfer his holding, and to sublet it or any part of it.

Under-raiyat's right of occupancy.—Under the repealed Acts X of 1859 and VIII B. C. of 1869, an under-raiyat could not acquire a right of occupancy in "lands sublet for a term, or year by year, by a raiyat having a right of occupancy" (sec. 6). This meant that if the land was sublet by a raiyat having a greater right than a mere right of occupancy, *e. g.*, by a raiyat who had a transferable interest, the under-raiyat could acquire a right of occupancy (*Ram Dhan Khan* v. *Hara Dhan Paramanik*, 12 W. R. 404). It also implied that if an under-raiyat held under an occupancy-raiyat otherwise than for a term, or year by year, *i. e.*, indefinitely or permanently, he could acquire a right of occupancy. In *Gour Hari Sing* v. *Behari Rahut*, 12 W. R. 277, 3 Beng. App. 138, and *Sheikh Asraf* v. *Ram Kisore Ghosh*, 23 W. R. 288, it was held that an occupancy-right could be acquired in a proprietor's private land, if held otherwise than for a term, or year by year. And as the words used about the proprietor's private lands were the same as those used about lands sublet by an occupancy-raiyat, the reason of the last two rulings applied.

It has been erroneously supposed that the High Court, by a long series of decisions, laid down the broad rule that an under-raiyat holding under an occupancy-

raiyat could not acquire a right of occupancy under the old Acts, under any circumstances. In *Jamitennissa Bibi* v. *Noor Mahamad*, W. R. Sp. X. 77, *Katal Gain* v. *Nader Mistri*, 6 W. R. 168 and *Nil Kamal Sen* v. *Danesh Sheikh*, 15 W. R. 469, it was held that an under-raiyat holding for terms, or holding year by year, did not acquire a right of occupancy. In the two cases, *Kali Kishore Chatterjee* v. *Ram Charan Shaha*, 9 W. R. 344 and *Haran Chandra Pal* v. *Mukta Sundari Choudhurain*, 10 W. R. 113, 1 Beng. A. C. 81, the point decided was that an occupancy-raiyat had a right to sublet, and did not lose his right of occupancy by subletting. In *Gilmore* v. *Sarvessari Dasi*, W. R. Sp. X. 72, *Moulavi Abdul Jabbar* v. *Kali Charan Dutt*, 7 W. R. 81 and *Annapurna Dasi* v. *Radhamohan Das*, 19 W. R. 95, it seems to have been broadly laid down that no occupancy-right could be acquired by holding under an occupancy-raiyat. But the reports are meagre. And it was never ruled that an under-raiyat could not acquire a right of occupancy by holding land on an indefinite lease or a permanent lease.

The law under the old Acts on this point, thus, was as follows :—(1) an under-raiyat holding under a raiyat, who had a greater right than a mere right of occupancy, could acquire a right of occupancy ; (2) an under-raiyat holding under a raiyat, who had a mere right of occupancy, for terms, or year by year, did not acquire a right of occupancy ; (3) whether an under-raiyat holding under a raiyat, who had a mere right of occupancy, on an indefinite or perpetual lease, acquired a right of occupancy or not, was not judicially decided.

Under the present Act, the capability of an under-raiyat to acquire a right of occupancy, has been wholly left to custom and usage (sec. 182, illus. 2). He cannot acquire a right of occupancy even when holding under a raiyat having a greater right than a mere right of occupancy, *e.g.*, a raiyat at a fixed rate, unless there is a custom or usage in his favour. In this matter, an under-raiyat is now positively in a worse position than he was under the old Acts. It is said that in Jessore there is a custom under which the under-raiyat acquires a right of occupancy in lands sublet to him.

The Act has, further, made no provision to save existing occupancy-rights acquired under the repealed Acts by under-raiyats. Under-raiyats who acquired the statutory right of occupancy would thus appear to be liable to ejectment on expiry of the term, if he has a written lease, or at the end of an agricultural year, if he has no lease. If, however, the occupancy-right is according to custom and usage, his liability to ejectment will depend on such custom or usage.

His right to transfer and to sublet.—Under the old Acts the right of an under-raiyat to transfer the under-holding depended on custom (*Banomali Bajadar* v. *Kailas Chandra Majumdar*, Ind. 4 Cal. 135). The law is the same under this Act (sec. 183).

Section 4 describes an under-raiyat to be a tenant holding immediately or *mediately* under a raiyat. This presumes in the under-raiyat a right to sublet. It would appear that such right depends on custom. An under-raiyat would not lose his right by subletting, if allowed by custom. And if he sublets by a registered lease, he may make a profit of 50 per cent. under section 48.

CHAPTER VIII.

GENERAL PROVISIONS AS TO RENT.

THE special incidents of the five different classes of tenancies have been treated in the last five Chapters; the general incidents that attach to all the classes or to two or more of them are now treated in this Chapter. But neither were the repealed Acts nor is this Act meant to be a complete code. The repealed Acts were supplemented by a considerable number of principles, accepted in other Acts or recognized in case-law. A large portion of the latter has now been embodied in this Act. It will be useful here to discuss the more important of the remaining principles and to indicate if any such principle has now been set aside.

A—Forfeiture for disclaimer abolished.—The principle of English law is that where, by matter of record, a tenant disclaims his landlord's title, and sets up an adverse title either in himself or in some third person, he thereby forfeits his tenancy. This principle was more or less followed in a number of decisions (*Mirza Nader Beg* v. *Muldaram*, 2 W. R. X. 2; *Pandey Bisvanath Roy* v. *Bhairab Sing*, 7 W. R. 145; *Ram Nuffer Bhattacharjee* v. *Dhol Gobinda Thakur*, 1 Cal. 421; *Debi Misser* v. *Mungur Mia*, 2 Cal. 208; *Satyabhama Dasi* v. *Krishna Chandra Chatterjee*, Ind. 6 Cal. 55; *Mozharaddin* v. *Gobind Chandra Nandi*, Ind. 6 Cal. 436; *Isan Chandra Chatterjee* v. *Shama Charan Dutt*, Ind. 10 Cal. 41). But in other cases, doubt was expressed as to the applicability of the principle in this country (*Rajnarain Dutt* v. *Gourmani Dasi*, 6 W. R. 215; *Mahamed Basirulla Bhunia* v. *Ahmed Ali*, 22 W. R. 448; *Krishna Chandra Chatterjee* v. *Satyabhama Dasi*, Ind. 6 Cal. 55). And it was pressed on the Court, in *Mozharaddin* v. *Gobind Chandra Nandi* (Ind. 6 Cal. 436), to refer the point to a Full Bench for decision; but the Court declined to do so.

It would appear that forfeiture for disclaimer has been abolished by this Act as to the tenancies dealt with by it. The tenants of the different classes may be ejected on grounds specified in this Act, but *not otherwise*; and disclaimer of the landlord's title is not one of those grounds. An amendment was proposed in Council to add this ground of ejectment; but it was

negatived. The following is what Mr. Ilbert said on the occasion:—"I cannot advise the Council to give legislative sanction to what may fairly be described as an obsolescent doctrine of English law. I will not call it an obsolete doctrine, because it still appears in the text-books. But I call it an obsolescent doctrine, because it is very rarely enforced, and when attempts are made to enforce it, the Courts regard it with disfavour and limit its application in every possible way. And it appears to me that the doctrine is even more dangerous in Bengal than it is in England. Owing to a variety of well known circumstances, such as the fact that the raiyat usually does not derive his title from contract, to the comparative rarity of written agreements, to the absence of definite landmarks, and to the shifting from natural causes of such landmarks as exist, it is often a matter of extreme doubt whether the relation of landlord and tenant exists between two persons with respect to a particular land. And when the existence of such a relation is denied or questioned on either side, we are by no means entitled to assume that the grounds for denying or questioning it are fraudulent or improper. We have done our best, by various provisions of this Bill, to lessen the number of excuses for alleging this doubt, and to provide for cases in which it is alleged in good faith. Thus, we have in section 60 carried a step further the policy of the Bengal Registration Act by enacting that where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized on that behalf, shall be a sufficient discharge for the rent, and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person. We have by another section (sec. 61) enabled a tenant, who entertains a *bonâ fide* doubt as to the person entitled to his rent to pay the rent into Court. We have said that when a person is sued for rent, and admits that rent is due but pleads that it is due to a third person, the plea is not to be entertained except on terms of payment into Court (sec. 150). And we have endeavoured to help the landlord who is in doubt whether to treat an occupant as a tenant or as a trespasser, by authorizing him to claim, in a suit for trespass, as alternative relief, a declaration that the defendant is liable to pay for the land rent at a rate to be fixed by the Court (sec. 157). By these and other provisions we have endeavoured to assist, as far as is practicable and reasonable, both landlords and tenants; and I am not prepared to go further."

The Transfer of Property Act IV of 1882, section 111, clause (*g*), provides that a lease of immovable property determines in case the lessee renounces his character as such by setting up a title in a third person, or by claiming title in himself; and the lessor or his transferee does some act showing his intention to

determine the lease. But a general rule for the interpretation of statutes is, that a subsequent statute always limits the application of a previous one. The provisions of the present Act as to the ejectment of tenants, being expressly stated to be exclusive, cannot therefore be supplemented by those of the Transfer of Property Act. Section 117 of the last Act, again, enacts that "none of the provisions of this Chapter (sec. 111 is in it) apply to leases for agricultural purposes," unless so extended by the Local Government according to the provisions of that section.

B—Landlord bound to give and maintain peaceful possession.—In every agreement to lease land, there is an implied condition that the lessor will give peaceable possession of the tenancy to the lessee (*Munee Dutt Sing* v. *Campbell*, 11 W. R. 278; S. C. in review, 12 W. R. 149; *Bullen* v. *Lalit Jha*, 3 Beng. App. 119; *Radha Nath Chowdry* v. *Jay Sundar Maitra*, 2 Cal. 302). Delivery of possession being a condition necessary for the maintenance of an action for rent, it is necessary for the landlord to show that the tenant was able to receive possession (*Haris Chandra Kundu* v. *Mohini Mohun Mitra*, 9 W. R. 582). To retain his right to rent the landlord, is further bound to maintain his tenant in peaceable possession. The landlord is not entitled to rent, if the tenant is interrupted or disturbed in his possession by the landlord himself or any person claiming under him, or paramount to him: thus if he grants a later lease and such lessee dispossesses the tenant (*Gobind Chand Juttee* v. *Monmohan Jha*, 14 W. R. 43); or if he induces under-tenants to pay rent directly to him (*Haimavati Devi* v. *Sri Krishna Nandi*, 14 W. R. 58); or if he receives the rents from the under-tenants (*Krishna Sundar Sanyal* v. *Kumar Chandra Nath Roy*, 15 W. R. 230); or if he takes possession by a sezawal (*Douzelle* v. *Giridhari Sing*, 23 W. R. 121); or if the tenant is evicted by the superior landlord on the ground that the landlord's rights have ceased (*Braja Nath Pal Chowdry* v. *Hira Lal Pal*, 1 Beng. A. C. 87, 10 W. R. 120; *Gopanand Jha* v. *Lala Gobind Prasad*, 12 W. R. 109). But if the tenant is disturbed in possession by the wrongful act of a stranger, the landlord's right to rent is not affected, the stranger being liable to the tenant for the trespass (*Gobind Chunder Chunder* v. *Krishna Kant Dutt*, 14 W. R. 273). The right to rent, however, ceases if the tenant is dispossessed by a person who has a good title, the lessor having none. (See *Rangalal Sing* v. *Lala Rudra Prasad*, 17 W. R. 386.)

C—Liability to pay for use and occupation.—The Full Bench case of *Lakhi Kant Das Choudhuri* v. *Samiraddin Laskar* (13 Beng. 243, 21 W. R. 209) has finally settled that where a landlord sued a raiyat for arrears of rent on a kabulyat and the Court found that such kabulyat had not been executed by the raiyat, although he had occupied the land, the landlord is entitled to have a further trial of the question, whether any and what amount of rent is due on account

of the raiyat's occupation of the land, *if the landlord claimed in the alternative*, and the raiyat had notice that on failure to prove the kabulyat, the landlord would claim to recover for the use and occupation of the land. The Full Bench ruling confirmed the decisions in *Raj Kumar Sing* v. *Chota Raj Kumar Sing*, W. R. Sp. X. 12; *Phulabati Kooer* v. *Gossain Lachman Das*, 13 Beng. 244, note, 10 W. R. 81; *Krishna Mohan Mukerjee* v. *Raju De*, 13 Beng. 245, note, 19 W. R. 233; and *Rukhini Kant Roy* v. *Sharikatenessa*, 13 Beng. 246, note; and overruled the decisions in *Sheikh Jitu* v. *Sheikh Betun*, Marsh. 47; *Fatima Bibi* v. *Arip Sukani*, Marsh. 263; *Shimroo Karigar* v. *Ananda Chandra Roy*, Marsh. 57; *Narayani Dasi* v. *Narahari Mohonta*, Marsh. 70; *Bhairab Chandra Choudhuri* v. *Haradhan Ghosh*, Marsh. 561; and *Banamali Charan Mytee* v. *Sheikh Hafizuddin*, 13 Beng. 247, note, 12 W. R. 317. The Full Bench ruling has since been followed in *Rani Lalan Mani* v. *Sona Mani Debi*, 22 W. R. 334 and in *Sarnamayi* v. *Dina Nath Gir Sannyasi*, Ind. 9 Cal. 908. In the last case, the suit was decreed against three persons who all claimed adversely to each other as heir of the deceased tenant and were in possession of the tenancy in different portions.

D—**Tenant cannot deny landlord's title.**—"No tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given." (Sec. 116 of Act I of 1872.) But though the tenant is not permitted, during the continuance of his tenancy, to deny that the landlord had a title at the beginning of his tenancy, he is at liberty to prove that such title has ceased to exist (*Burne & Co.* v. *Rashamayi Dasi*, 14 W. R. 85; *Gopanand Jha* v. *Lala Gobind Prasad*, 12 W. R. 109). Here he does not dispute the title of the landlord at the beginning of the tenancy, but confesses and avoids it by matter *ex post facto*. Further, the tenant is *only* estopped from denying the landlord's title *at the beginning of his tenancy*. And it has been held that "the words 'at the beginning of the tenancy' in this section can only apply to cases where the tenants are put into possession of the tenancy by the person to whom they have attorned, and not to a case where the tenants have previously been in possession." So that when the tenant was in possession before, and all that he did was to give a kabulyat to a person claiming a derivative title from the last owner, he is not estopped from disputing the title of that person (*Lal Mahomed* v. *Kallanus*, Ind. 11 Cal. 519). A tenant, who pays rent to another believing him to be the landlord's representative, is not estopped from afterwards showing the want of title in that person (*Bani Madhav*

Ghosh v. *Thakur Das Mandal*, Beng. F. B. 588). In *Donzelle* v. *Kedarnath Chakravarti*, 7 Beng. 720, A had executed a kabulyat to B, the zemindar; B subsequently granted a patni lease to C, who sued A for rent upon the kabulyat executed in favor of the superior landlord; A admitted the execution of the kabulyat, but pleaded that B was only the benamdar for her husband: it was *held* that it was open to A to prove his plea. This case was decided before the Evidence Act came into operation; and it may be questioned whether it has not been overruled by section 116 of that Act. It may, however, be argued that the tenant's plea was consistent with this section, in as much as it was substantially not a denial of the landlord's title, but an assertion that B was merely an agent or trustee of the real landlord.

Section 116 of the Evidence Act is, however, limited by section 78 of the Land Registration Act. The tenant may not deny the landlord's title, but may plead that the landlord, not having his name registered under the Land Registration Act, may not recover rent under the provisions of that Act. *See*, further, section 60 of this Act, and notes thereunder.

E—Possession of tenant not adverse to his landlord.—The possession of the tenant is derived from the landlord and is not adverse to him; the mere non-payment of rent to the landlord for twelve years does not, therefore, create in the tenant a right to hold the land without payment of rent (*Subal Chandra Sett* v. *Baidya Nath Synee*, 1 Hay, 111; *Trailakya Tarini Dasi* v. *Mahim Chandra Mullick*, 7 W. R. 400; *Giris Chandra Roy* v. *Bhagwan Chandra Roy*, 13 W. R. 191; *Rangalal Mandal* v. *Abdul Gaffur*, Ind. 4 Cal. 314; *Poresh Narayn Roy* v. *Kasi Chandra Talukdar*, Ind. 4 Cal. 661). The same principle equally applies to the case of a superior landlord; and where a person holds under the plaintiff's tenant, his possession is not adverse to the plaintiff (*Bansraj Bhukta Ghatwal* v. *Mohant Meghlal Puri Gossain*, 20 W. R. 398). But if the tenant openly sets up a hostile title, his possession becomes an adverse one, and limitation begins to run (*Haranath Roy* v. *Jogendra Chandra Roy*, 6 W. R. 218). And in the Full Bench case of *Dina Mayi Debi* v. *Durga Prasad Majumdar* (21 W. R. 70), it has been held that if the defendant is really a trespasser, the fact, that he sets up not only limitation by adverse possession, but also pleads tenancy in his written statement, does not, when this plea of tenancy is neither accepted by the plaintiff nor found in the case in the defendant's favor, preclude him from proving adverse possession of twelve years, and thus defeating the plaintiff's claim for possession by the law of limitation. But if the defendant admits tenancy, and *there is no finding to the contrary*, his possession cannot be regarded as adverse (*Duli Chand* v. *Syam Bihari Sing*, 24 W. R. 113).

F—Real tenant may be sued for rent.—It has been held by a Full Bench, in *Prasanna Kumar Pal Chowdhuri* v. *Kailas Chandra Pal Chowdhuri*, 8 W. R. 428, that a landlord, suing the ostensible tenant for rent, is not precluded from afterwards suing the person, beneficially interested in the tenancy and in actual possession, for rent subsequently accrued due. (*See*, also, *Jadu Nath Pal* v. *Prasanna Nath Dutt*, 9 W. R. 71.)

G—Ex parte rent decree how far binding.—It has finally been settled by the Full Bench ruling in *Maharaja Bir Chandra Manikya* v. *Ram Kissen Shaha* (23 W. R. 128, 14 Beng. 370), that an *ex parte* decree for rent, even if unexecuted and its execution barred by limitation, is relevant evidence of the rate of rent in a subsequent contested suit. This ruling set aside the decision in *Ram Sundar Tewari* v. *Srinath Dewasi* (10 W. R. 215, 14 Beng. 371, note) and *Gaya Prasad Aubasti* v. *Tarini Kant Lahiri Chowdry* (decided earlier though reported later in 23 W. R. 149). But the value of such a decree as evidence has not yet been finally settled. In *Bishnu Prasad Sing* v. *Ramgiri Chella*, 20 W. R. 3, there is a *dictum* that "such a decree was admissible in evidence, but unless it was followed up by evidence that it has been executed or that the defendant, against whom it was obtained, had paid the money and satisfied the decree, it would be worthless." In *Bir Chandra Manikya* v. *Haris Chandra Das* (Ind. 3 Cal. 383), it was, however, held that an *ex parte* decree, unexecuted and barred by limitation (it was the same decree and the same case, after remand, as before the Full Bench in 14 Beng. 370), was, *prima facie* for purposes of evidence, as good as any other decree, and in the absence of fraud or irregularity, as binding as a decree in a contested suit. In *Nilmani Sing* v. *Hiralal Das* (Ind. 7 Cal. 23), on the other hand, it was held that an *ex parte* decree alleged (*not*, proved) to be fraudulent was not by itself sufficient evidence of the rate of rent. This ruling was followed in *Bhagirath Patuni* v. *Ram Lochan Deb* (Ind. 8 Cal. 275). In this suit for rent of a half share of land, the plaintiffs relied upon an *ex parte* decree for rent at a certain rate which they had obtained in 1869 against the tenants of this share. The defendants relied upon a subsequent decree in a contested suit by plaintiffs against the tenants of the other half share in which a lower rate of rent had been given. No other evidence than the decrees was produced on either side. It did not appear whether the *ex parte* decree had been executed. *Held*, that it was open to the defendants to dispute the rate of rent and that the plaintiffs were bound to prove that they were entitled to recover it.

The result of these decisions would appear to be that (1) an *ex parte* decree for rent is relevant evidence of the rate of rent, (2) if such a decree is satisfied by the tenant, in Court or out of it, it is conclusive evidence of such rate, and (3) an unsatisfied *ex parte* decree is not sufficient evidence to prove the rate of rent.

Rules and presumptions as to amount of rent.

Rules and presumptions as to fixity of rent.

50. (1) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding.

Old Acts.—Sections 3 and 15 of Act X of 1859 and sections 3 and 16 of Act VIII B. C. of 1869.

Predecessors in interest.—These words had no place in the corresponding sections of the old Acts, under which the rule and presumption of fixity of rent were applicable to all cases where *the land had paid the same rent*, irrespective of the mode of acquisition by the tenant in possession. In *Ramnath Lal Bhakat* v. *Watson*, 1 R. J. P. J. 54, Peacock, C. J., observed: "Sections 3 and 4 of Act X make no mention of the nature of the pottahs under which the land has been held, or of the right under which a fixed rent has been paid without alteration, but exempt from enhancement lands which have been held at fixed rents from the time of the Permanent Settlement under whatever circumstances the land has been so held. This is clearly shown by section 4, which says: 'Whenever in any suit under this Act, it shall be proved that the rent at which land is held by a ryot in the said provinces, has not changed for a period of 20 years before the commencement of the suit, it shall be presumed that the land has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown, or unless it be proved that such rent was fixed at some later period.' The presumption required to be made is *not* that the land has been held by *the ryot and his ancestors*, or *by him and the persons who had power to alienate it to him*, but *simply* that it has been held at a fixed rent. The right of exemption from enhancement is founded upon the simple fact of the land having been held at a fixed rate of rent from the time of the Permanent Settlement." In *Tirthanunda Thakur* v. *Herdu Jha*, Ind. 9 Cal. 252, it was remarked: "The words of the section (sec. 4) are sufficiently plain; and seem to us to entitle the holder of the land for the time being, *however he may have acquired it*, to the benefit of the presumption, if he can show that there has been a continuous and uniform payment of the same rent for 20 years. This interpretation is not inconsistent with what has been decided in this Court in previous cases; it was not necessary to lay down more than this, that the holding of the ryot, or of some person through whom he

claims, for a period of 20 years, was enough to raise the presumption. In the present case it has been found that there was no break in the continuity of the payment of the rent alleged by the defendant, but that he, without any interruption of tenancy, was substituted by the zemindar for the previous tenant, and continued to pay the same rent."

The law has now been changed and the application of the rule and presumption as to the fixty of rent has been narrowed. The tenant must show that either he or his *predecessors in interest* held at a uniform rent, in order to entitle him to the benefit of the rule in this or the presumption in the next sub-section. The rule and the presumption do not arise if the tenant or his predecessor got the tenancy after the date of the Permanent Settlement from the landlord, though the previous tenant had held at the same rent.

Rent or rate of rent which has not been changed.—Reference is requested to the notes, pages 60—63, *ante*, for the meaning of these words. These words include—

(1) rent in *money* which is fixed in *amount* for the whole tenancy; as, so many rupees for it;

(2) rent in *money* which is fixed as to the *rate* for each unit of measurement, the *amount* being ascertained according to the quantity of land held by the tenant; as, so many rupees per each bigha of land held;

(3) rent in *kind* which is fixed in *amount* for the whole tenancy; as, so many maunds of paddy or maize for it;

(4) rent in *kind* which is fixed as to the *rate in quantity* for each unit of measurement, the *amount* being ascertained according to the quantity of land held by the tenant; as, so many maunds of paddy or maize for each bigha of land held; and

(5) rent in *kind* which is fixed as to the *rate in proportion* to the produce of the tenancy; the amount being ascertained according to the actual produce of the land; as, half or two-fifths or one-third of the actual produce.

Which has not been changed.—Rent or rate of rent was held under the old Acts not to have been changed—

(1) by commutation of rent in kind to rent in money (*Miterjit Sing* v. *Toondun Sing*, 12 W. R. 14);

(2) by converting sicca rupees—the sicca rupee being one rupee one anna 5 kara 1 krant of the Company's coin—into Company's rupees (*Kali Charan Dutt* v. *Sosi Dasi*, 1 W. R. 248; *Katyayani Debi* v.

Sundari Debi, 2 W. R. X. 60; *Tarasundari Barmani* v. *Sibeswar Chatterjee*, 6 W. R. X. 51);

(3) by a variation of the rent payable to the landlord owing to the tenant's getting a larger area of the tenancy on allotment by decree (*Gopal Chandra Bose* v. *Mathura Mohan Banerjee*, 3 W. R. X. 132);

(4) by abatement of rent on account of a portion of the land being rendered unculturable by the overflow of a river,—such a case being like one where reduction was allowed for diluvion (*Radhagobind Roy* v. *Kaimatulla Talukdar*, 21 W. R. 401);

(5) by an unexplained and trifling variation (*Haranath Roy* v. *Amir Bisvas*, 1 W. R. 230,—from Rs. 587 to Rs. 615; *Ramratan Sarkar* v. *Chandra Mukhi Debi*, 2 W. R. X. 74,—nominal reduction of one anna three pies; *Ananda Lal Chowdhuri* v. *Hills*, 4 W. R. X. 33,—of one rupee in a jama of Rs. 60; *Mansur Ali* v. *Banu Sing*, 7 W. R. 282,—of one anna; *Elahi Baksh Choudhari* v. *Rupan Telee*, 7 W. R. 284; *Watson* v. *Nandalal Sarkar*, 21 W. R. 420,—two or three annas);

but a variation from Rs. 11-13 to Rs. 13-4 was held to be sufficient to show that the rent has changed (*Bisvesvar Chakravarti* v. *Umacharn Roy*, 7 W. R. 44);

(6) by payment of illegal abwabs (*Samiraddin Laskar* v. *Haranath Roy*, 2 W. R. X. 93);

(7) by payment of a higher rent for a few years under a summary decree not treated as involving any question of title (*Golukchandra Roy* v. *Sandes*, 5 W. R. X. 32);

(8) by payment of a higher rent for some years according to the rate fixed by decree in an enhancement suit, which decree was afterwards set aside on appeal (*Mohomed Elahi Baksh* v. *Kalimohan Mukerjee*, Ind. 5 Cal. 589);

(9) by payment of a higher rent for some years under a decree for enhancement, decided in accordance with a controlling decree which was subsequently set aside on appeal (see *Jogeschandra Dutt* v. *Kalicharan Dutt*, Ind. 3 Cal. 30, F. B.)

(2) If it is proved in any suit or other proceeding under this Act that either a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the

institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement.

Old Acts.—Sections 4 and 16 of Act X of 1859 and sections 4 and 17 of Act VIII B. C. of 1869.

The application of the presumption of this sub-section is not only limited by the proviso contained in the next paragraph, but also by sections 115 and 191. Section 115 provides that when the particulars mentioned in section 102, clause (*b*), have been recorded of any tenancy, under the provisions of Chapter X, by a Revenue-officer making a record-of-rights, the presumption under this sub-section shall not thereafter apply to that tenancy. Section 191 excludes *tenures* in temporarily-settled estates from the application of the presumption of the sub-section. It is likely that 'tenures' in that section means tenancies in general (see note under that section). Under the old Acts it was held that the presumption arose in favor of all tenancies in such estates, and it was not necessary to prove that the land of the tenancy was the subject of the Permanent Settlement (*Sadananda Mytee* v. *Nabaratan Mytee*, 16 W. R. 289). This ruling must be considered to be now set aside.

In permanently-settled estates, the presumption now arises not only against private landlords, but also against Government as landlord in khas mahals. Tenants in khas mahals now enjoy the benefit of this presumption fully as well as tenants in other estates.

Pleading.—In order that a Court should raise the presumption of this sub-section, it is not necessary that the tenant should allege in so many words that the tenancy has existed since the Permanent Settlement; it is sufficient if he pleads uniform payment of rent for 20 years and makes no allegation inconsistent with the existence of the tenancy at that time and its devolution to him through predecessors in interest. The Court is then bound to make the presumption in his favor, if he succeeds to prove uniform payment of rent for 20 years. In the following cases the plea was held sufficiently raised—(1) that the tenure was of the grandfather's and inherited by successors and of long standing (*Hem Chandra Chatterjee* v. *Poran Chandra Roy*, 3 W. R. X. 162); (2) that the tenancy was of a very long time, when the benefit of the presumption was expressly claimed (*Dhan Sing Roy* v. *Chandra Kant Mukerjee*, 4 W. R. X. 43); (3) that rent had been paid uniformly for twenty years, and therefore the plaintiff's claim had incurred "tamadi" (*Rakhal Das Tewari* v. *Kinuram Haldar*, 7 W. R. 242); (4) that the rent had been uniformly paid for forty years, when the benefit of the presumption was claimed (*Pulin Behary Sen* v. *Nimai Chand*, 7 W. R. 472).

But when the pleadings contain anything inconsistent with the existence of the tenancy from the Permanent Settlement, or when the tenancy is admitted or proved to have been created after the Permanent Settlement, the presumption does not arise (*Chota Joora Mandal* v. *Watson*, 1 Hay, 232; *Ram Kristo Sarkar* v. *Mia Deler Ali*, W. R. Sp. X. 36; *Hari Kissen Roy* v. *Sheikh Baboo*, 1 W. R. 5; *Lachmee Prasad* v. *Ram Golam Sing*, 2 W. R. X. 30; *Kundà Misser* v. *Gonesh Sing*, 15 W. R. 193, 6 Beng. App. 120).

The existence, however, of a pottah or an amilnama of a date subsequent to the Permanent Settlement does not, by itself, show that the tenancy was created after that time and did not exist before (*Kristo Mohan Ghose* v. *Isan Chandra Mitter*, 4 W. R. X. 36; *Lasmi Narayan Shahu* v. *Kuchil Kant Roy*, 6 W. R. X. 46; *Giris Chandra Bose* v. *Kali Kristo Haldar*, 6 W. R. X. 58; *Ram Chandra Dutt* v. *Jogesh Chandra Dutt*, 19 W. R. 353; *Pyari Mohan Mukherjee* v. *Kailas Chandra Bairagee*, 23 W. R. 58). A pottah may be a confirmatory grant only; and there is nothing in accepting such a grant inconsistent with the presumption that a prior title existed.

The fact of the tenant setting up a mokarari title which is not proved, or which is proved false, does not preclude the tenant from claiming the benefit of the rule and presumption as to fixity of rent (*Rani Sarnamayi* v. *Maharaja Satis Chandra*, 2 W. R. P. C. 14; *Chamarini Bibi* v. *Ainulla Sardar*, 9 W. R. 451).

If it is proved, &c.—The tenant must give strict evidence of the uniformity of rent for 20 years immediately preceding the commencement of the suit (*Massamat Mahmooda Bibi* v. *Huridhun Khalifa*, 5 W. R. X. 12; *Shamlal Ghosh* v. *Baistab Charan Majumdar*, 7 W. R. 407). And where evidence for seventeen years was adduced, and it was shown that buildings had been erected on the land 40 years ago, the evidence was held insufficient (*Rajnarayan Roy Choudhuri* v. *Atkins*, 1 W. R. 45). But though the evidence must extend over 20 years, it is not essential that the tenant should prove uniformity of rent for every year of the twenty (*Katyayani Debi* v. *Sundari Debi*, 2 W. R. X. 60; *Gobind Karmakar* v. *Kumudnath Bhattacharji*, 3 W. R. X. 148; *Kamallochan Roy* v. *Zamiraddin Sirdar*, 7 W. R. 417; *Foschola* v. *Hara Chandra Bose*, 8 W. R. 284). The whole period of 20 years must, however, be included between the limits for which the evidence bears, and there must also be evidence to lead to the belief that the rent was uniform during the intervening period (*Rashvihari Ghosh* v. *Ram Kumar Ghosh*, 22 W. R. 487).

It is the uniformity in the rent agreed upon, either expressly or impliedly, between the parties, to be payable, that raises the presumption irrespective of the amount actually paid during the several years (*Moran* v. *Ananda Chandra Majum-*

dar, 6 W. R. X. 35; *Ahmed Ali* v. *Golam Gaffur*, 11 W. R. 432). Variation of payment during different years may be to make up the deficiency of one year by payment in the other. The variation of payments, therefore, does not show variation of rent payable (*Moran* v. *Ananda Chandra Majumdar*, 6 W. R. X. 35). It is quite possible that a tenant may not have paid his rent regularly; in which case there would be a variation in the rent as shown by the receipts. If this kind of variation were to be the test, no tenant would be safe and the object of the law would be frustrated (*Shama Charan Kundu* v. *Dwarikanath Kabiraj*, 19 W. R. 100). And just as, on the one hand, uniformity of payments is not essential to raise the presumption, so, on the other, the amount of rent actually paid is not conclusive evidence of the amount of rent payable for the land. Such evidence may be rebutted by showing that the actual rent is greater or less (*Anandamayi Dasi* v. *Rani Sarnamayi*, 6 W. R. X. 83).

Immediately before the institution of the suit.—Proof of uniform payment of rent up to the time of the suit is not necessary to raise the presumption, in a case where the landlord refuses to take rent for a few years before suit (*Tara Sundari Debi* v. *Guru Charan Chatterjee*, 2 W. R. X. 59).

Until the contrary is shown.—That the rent has varied during the last 20 years is shown by the existence of a decree passed during that period, by a competent Court declaring the tenant's rent liable to enhancement, although no enhanced rent has ever been collected (*Rakhal Das Bose* v. *Sheikh Golam Sarwar*, 2 W. R. X. 69; *Nafar Chandra Pal Choudhuri* v. *Poulson*, 19 W. R. 175; *Doorga Charan Chatterjee* v. *Dayamayi Dasi*, 20 W. R. 243). But a declaratory decree that rent might be assessed at perganá rate, passed about 40 years before, when no variation of rent actually took place under that decree, was held not sufficient to rebut the presumption (*Gobind Chandra Dutt* v. *Haranath Roy*, 5 W. R. X. 10; in appeal to P. C. *Haranath Roy* v. *Gobind Chandra Dutt*, 23 W. R. 352, 15 Beng. 120). Nor is an *ex parte* summary decree sufficient to show that a variation has taken place in the amount of rent payable (*Kali Kant Roy* v. *Bibi Ashrafennissa*, 2 W. R. 326). Nor is a summary decree under Regulation VII of 1799 for the rent of 1265 at a higher rent than that at which the tenant claims to hold, which decree was passed in accordance with two other summary decrees for 1263 and 1264 for the reversal of which a suit was then pending in the Civil Court. Such a decree became a nullity on the reversal of the earlier decrees, and is therefore no evidence to prove a variation of rent (*Joy Kisori Choudhurani* v. *Gopal Lal Tagore*, 6 W. R. X. 28).

A mere alteration in rent recorded in the landlord's papers is no evidence of variation of rent, unless it is shown that the tenant actually paid such altered rent (*Gopal Mandal* v. *Nobo Kissen Mukherjee*, 5 W. R. X. 83).

A variation or enhancement affecting only a fractional share of a joint and undivided tenancy, is sufficient to show that the rent of the whole tenancy has varied (*Mahamad Maddin Mirdha* v. *Gopal Lal Tagore*, 2 Hay, 514; *Sarat Sundari Debi* v. *Ananda Mohan Sarma Ghatak*, Ind. 5 Cal. 273).

If a tenant holding at a particular rent is unlawfully evicted, he does not necessarily cease to hold at that rent. Eviction, though it would put an end to the tenant's possession, would not destroy the tenancy; and therefore if the tenant is restored to possession, he is restored to the original tenancy at the previous rent (*Latifannissa Bibi* v. *Baboo Pulin Behari Sen*, W. R. F. B. 91).

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before, a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

This is new.

The proviso in this clause was enacted with an eye to the Permanent Tenures Registration Bill *then* to have been shortly introduced into the Bengal Council. Its application is limited to tenancies at fixed rents, of which the registration is *compulsory*. Under the Permanent Tenures Registration Bill, as modified by the Select Committee, the Lieutenant-Governor is given the power to direct that the registration of permanent tenures in any district shall be optional or compulsory. The definition of the term "tenure" in the Bill is that it includes every interest in land whether rent-paying or not, save and except an estate, and save and except the interest of a raiyat or an under-raiyat as defined in the Bengal Tenancy Act, 1885. If these portions of the Bill be passed into law, the application of this proviso will be restricted only to one class of tenancies, *i. e.*, to tenures including under-tenures, and, further, in respect to them, to districts and sub-divisions, where the Lieutenant-Governor will direct the registration to be compulsory.

(3) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.

This is new.

This sub-section embodies the case-law on the point under the old Acts. It has been ruled that where a number of tenancies which have been held at fixed rates are consolidated into one tenancy, the tenant is entitled to claim the benefit of the rule and presumption of fixity of rent (*Sukhimani Haldar* v. *Ganga Gobind Mandal*, W. R. Sp. X. 126; *Kazi Khoda Newaz* v. *Nobo Kisore Raj*, 5 W. R. X. 53; *Raj Kisore Mukerjee* v. *Harihar Mukerjee*, 10 W. R. 117). But if any one of the tenancies is admitted or proved to have been created after the Permanent Settlement, the presumption does not arise at regards the *whole* of the consolidated rent (*Moula Baksh* v. *Jadu Nath Sadhukhan*, 21 W. R. 267). Similarly, the tenant is entitled to claim the benefit of the rule and the presumption, when a tenancy has been sub-divided and the rent apportioned to the different shares, or when a portion of the tenancy was alienated or relinquished, and the rent reduced on account of such alienation or relinquishment (*Hills* v. *Haro Lal Sen*, 3 W. R. X. 135; *Kashi Nath Laskar* v. *Bamasundari Debi*, 10 W. R. 429; *Kenaram Mullick* v. *Ram Kumar Mukerjee*, 2 W. R. X. 17; *Sudha Mukhi Dasi* v. *Ram Gati Karmakar*, 20 W. R. 419). The presumption, however, has been held not to arise in a case where the landlord did not consent to the sub-division and accept the several liabilities of the co-tenants, and one of them made default in paying rent of his share, and the others insisted that the landlord could not recover more than the rent so diminished. Here the entire jama is affected just as much as if the tenancy was held by one tenant and he paid a diminished rent, and insisted that he was not liable to pay more (*Hills* v. *Besarath Mia*, 1 W. R. 10). Addition of rent on account of additional land or reduction on account of diluvion does not constitute such a variation as to deprive the tenant of the benefit of the rule and the presumption (*Samiraddin Laskar* v. *Haranath Roy*, 2 W. R. X. 93; *Massamat Reazannissa* v. *Tookan Jha*, 10 W. R. 246; *Dwarikanath Sing* v. *Nobokumar Bose*, 20 W. R. 270).

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.

This is new.

Presumption as to amount of rent and conditions of holding.

51. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

This is new.

Under section 5 of Act X of 1859 and of Act VIII B. C. of 1869, the presumption was that the rent previously paid by an *occupancy-raiyat* was "*fair and equitable*"; under this section the presumption is that the rent previously paid by *any tenant* is payable for the present time. No presumption arises that any such rent is "fair and equitable." (*See* notes under sections 27 and 46.)

The presumption enacted by the section is in accordance with the rulings in *Sheikh Enatoolla* v. *Sheikh Elahi Baksh*, W. R. Sp. X. 42; *Tara Charan Banerjee* v. *Amir Mandal*, 22 W. R. 394; and *Srimati Altab Bibi* v. *Jugal Mandal*, 25 W. R. 234. *See* also *Uma Lochan Majumdar* v. *Nitay Chand Poddar*, 14 W. R. 467; and *Jumaut Ali Sha* v. *Chowdhuri Chutturdhari*, 16 W. R. 185.

Until the contrary is shown.—The contrary may be shown by the existence of a decree for an enhanced rent, even if the landlord accepted the old rent for some years after the passing of the decree (*Lander* v. *Binod Lal Ghose*, 6 W. R. X. 37). But if such acceptance was in accordance with a contract entered upon after the passing of the decree, the decree is superseded and the landlord cannot, after expiry of the term of the contract, fall back upon the old decree and recover the enhanced rent (*Nobin Chandra Sarkar* v. *Gour Chandra Shaha*, Ind. 6 Cal. 759).

Alteration of rent on alteration of area.

Alteration of rent in respect of alteration in area.

52. (1) Every tenant shall—

(*a*) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which having previously belonged to the tenure or holding was lost by diluvion or otherwise without any reduction of the rent being made, and

(*b*) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due

to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

Old Acts.—Section 4, clause (1) of Regulation XI of 1825; sections 17 and 18 of Act X of 1859; sections 18 and 19 of Act VIII B. C. of 1869.

Section 4, clause (1) of Regulation XI of 1825 provided: "When land is annexed by gradual accession to a subordinate tenure held under a superior landholder, the under-tenant, whether a *khudkhast* raiyat holding a mourasi istemarari tenure at a fixed rate of rent per bigha, or any other description of under-tenant, liable by his *engagements* or by *established usage* to an increase of rent for the land annexed to his tenure by alluvion, shall not be considered exempt from the payment of any increase of rent to which he may be justly liable."

Section 17 of Act X of 1859 and section 18 of Act VIII B. C. of 1869 provided: "A raiyat having a right of occupancy shall be liable to an enhancement of the rent previously paid by him on the ground that the quantity of the land held by the raiyat has been proved by measurement to be greater than the quantity for which rent has been previously paid by him."

Section 18 of Act X of 1859 and section 19 of Act VIII B. C. of 1869 provided: "Every raiyat having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise; or if the quantity of land held by the raiyat has been proved by measurement to be less than the quantity for which rent has been previously paid by him."

Alteration in the old law.—Under the above sections of the old Acts, as judicially interpreted, a tenant, though always entitled to reduction of rent for diluvion of land, was liable to pay increased rent for alluvion, *only* when the landlord's right to claim such increased rent was reserved by agreement or was supported by established usage (*Jagat Chandra Dutt* v. *Panioty*, 6 W. R. X. 48; *Gopal Lal Tagore* v. *Kumar Ali*, 6 W. R. X. 85; *Jagat Chandra Dutt* v. *Panioty*, 8 W. R. 427; S. C. in review, 9 W. R. 379; *Ram Nidhi Majhi* v. *Parvati Dasi*, Ind. 5 Cal. 823; *Golam Ali Chowdry* v. *Kali Kissen Tagore*, 8 Cal. 517; *Brajendra Kumar Bhoumik* v. *Upendra Narain Sing*, Ind. 8 Cal. 706; S. C., under different name, *Hara Sundari Dasi* v. *Gopi Sundari Dasi*, 10 Cal. 559). The law has now been changed and the rights and liabilities of landlords and tenants in case of both alluvion and diluvion have been made the same. The Rent Commission thus explained the reason of this change of the old law: "We have

further settled a doubtful question by expressly enacting that every tenure-holder shall be liable to pay additional rent for land gained by alluvion and shall be entitled to abatement of rent for land lost by diluvion. We here follow a principle recognized by the Government in dealing with the cognate subject of revenue (a) and in accordance with justice, equity and good conscience. We have applied the same principles to raiyats entitled to hold land at fixed rates. We think it unconscionable that when the land has ceased to exist, out of which issues the benefit in which the landlord and the tenant participate, the tenant, in addition to losing his own share of the benefit, should have to make good the landlord's share, thus conferring upon him the advantage of insurance without the payment of a premium. Then, as it is reasonable that he who seeks equity should do equity, it follows that the tenant, who has been relieved from the payment of rent for land which he has ceased to enjoy, should pay rent for additional land added to his enjoyment."

Holding.—This word in clauses (*a*) and (*b*) is apparently meant to include an under-raiyat's tenancy.

Clause (a). Excess of the area.—It is to be noted that increase of rent for increased area is no longer called *enhancement* of rent. The Rent Commission stated :—"This ground is, in our opinion, misnamed a ground of *enhancement*. If the quantity of land held by a raiyat is found upon measurement to be greater than the quantity for which he has been paying rent, and if he is compelled to pay rent for the excess, the whole rent payable by him is increased ; but the *rate* of rent

(a) Section 5 of Act IX of 1847 provides: "Whenever on inspection of any such new map it shall appear to the local Revenue authorities that land has been washed away from or lost to any estate paying revenue directly to Government, they shall without loss of time make a deduction from the sadr jama of the said estate equal to so much of the whole sadr jama of the estate as bears to the whole the same proportion as the mufassal jama of the land lost bears to the mufassal jama of the whole estate; but if the mufassal jama of the estate or of the land lost cannot be ascertained to the satisfaction of the local Revenue authorities, then the said local Revenue authorities shall make a deduction from the sadr jama of the estate equal to so much of the whole sadr jama of the estate as bears to the whole the same proportion as the land lost bears to the whole estate. And this deduction, with the reasons thereof, shall be forthwith reported by the local Revenue authorities for the information and orders of the Sadr Board of Revenue, whose orders thereupon shall be final."

Section 6 of the same Act provides: "Whenever on inspection of any such new maps it shall appear to the local Revenue authorities that land has been added to any estate paying revenue directly to Government, they shall without delay assess the same with a revenue payable to Government according to the rules in force for assessing alluvial increments, and shall report their proceedings forthwith to the Sadr Board of Revenue, whose orders thereupon shall be final."

payable is not increased, and the term 'enhancement' might well be confined to this latter increase. The cases under this head may, broadly speaking, be divided into two classes. The first class includes cases of encroachment—where the raiyat has encroached upon the uncultivated or unoccupied land of his landlord and has surreptitiously enlarged his holding. These cases are of less frequent occurrence in the more settled parts of the country, where there is little or no waste, where the fields are tolerably well demarcated by *ails* or low boundaries, about a foot and half high, and every field has a well known owner. In less populous districts, where cultivation is in patches, and a considerable portion of land lies fallow or waste, the opportunity and temptation to encroachment are greater, and the *bonâ fide* cases of this class are consequently more numerous. Under the second class come those cases in which there is little pretence for saying that any encroachment has really taken place, but a measurement, or the threat of measurement, is used as a means of obtaining an increase of rent, which the landlord thinks he ought to have and which he sees no other way of obtaining. There is a dispute about the proper length of the measuring pole, and the landlord, having made the measurement with a pole of his own choosing, hopes to get this dispute settled in his favor, or he trusts to the various well-known devices of the measuring *amin* to make the land more than it really is. Even where the landlord is too honourable to resort to such practices, his *amla* makes rich gains out of a measurement; and the raiyat, who would refuse to satisfy their cupidity, would find the area of his holding considerably enlarged in the measurement papers, while, if he can pay sufficiently handsomely, he finds no difficulty in getting it untruly understated. Then it may be that rent has not usually been paid at so much per bigha, the practice being for a *jumma* or holding, roughly described as containing so many bighas, to be let at a lump sum; and the landlord taking this rough description as an accurate one calculates the rate of rent, and being able to show that the holding contains more land than is shown by this rough description, claims extra rent for excess. The absence of written leases makes this too commonly possible. We have endeavoured to provide for some of these cases by *illustrations*. The best remedy for the perversion of this portion of the law will be by rendering the results sought to be achieved by such perversion more easily achievable in a legitimate manner and upon the grounds legitimately applicable." (R. C. I. 28-9.)

Where the tenant is found to occupy more land than he pays for, the case falls under one or other of the three following heads :—(*a*) additional land has accreted to the tenancy by alluvion, (*b*) the land of the tenancy was not previously ascertained by measurement or it was not limited by boundaries, and (*c*) the tenant has encroached upon more land than what was leased out to him.

A—Alluvion.—In cases of alluvion, the land becomes part and parcel of the

tenancy, under clause 1, section 4, Regulation XI of 1825. The landlord has no right to take such land away or settle it with another tenant (*Gobindamani Debi* v. *Dinobandhu Shaha*, 15 W. R. 87 ; *Atimulla* v. *Shiekh Sahibulla*, 15 W. R. 149). It is not settled, however, whether in case of a non-permanent tenancy the landlord may take such land away or not (*Zahiruddin Paikar* v. *Campbell*, 4 W. R. 57, Contra. *Bhagavat Prasad Sing* v. *Durga Bijoy Sing*, 16 W. 95).

B—Excess discovered by measurement.—In the second class of cases also, the occupier is tenant of the person under whom he holds the admitted area and may be liable to pay additional rent for the excess area (*Gopi Nath Mukerjee* v. *Ramhari Mandal*, 9 W. R. 476).

C—Encroachment.—In the third class of cases, *i.e.*, where there is a positive encroachment by the tenant whose land was previously ascertained by measurement or by boundaries, the position of the encroacher has not yet been finally settled. In *Roshun Bibi* v. *Biswanath Sarkar*, 6 W. R. X. 57, the encroacher was described to be a trespasser. The judgment stated :—" It appears to us that the plaintiff is not entitled to enhance the rent. The suit was for a kabulyat at an enhanced rent, and the defendant set up that he had held the land at Rs. 5 rent under a mokarari pottah. The plaintiff says that the mokarari pottah included 5 khadas odd, whereas the land upon measurement was found to be 8 khadas odd. But the defendant had been paying Rs. 5 rent for what he had held, and he held the 8 khadas as having been included in the mokarari pottah. If the lands, in excess of the 5 khadas were not included under the mokarari pottah and the defendant encroached upon them, he was a trespasser and not a tenant as to that part of the land, and the landowner could not enhance the rent of that portion of the land which the defendant did not hold as a tenant. There was no doubt that the tenant in this case had been paying Rs. 5 a year for the land held by him under the mokarari pottah, and he contended that the whole 8 khadas were included in the mokarari pottah at Rs. 5. If the defendant has been paying Rs. 5 rent for 8 khadas, the case does not fall within the third clause of section 17, Act X of 1859, for the quantity of land held by him has not been proved by measurement to be greater than the quantity for which rent has been previously paid. If he has been paying the Rs. 5 for the 5 khadas and nothing for the excess, he may be a trespasser as to the excess, but he is not a tenant liable to assessment." In *David* v. *Ramdhan Chatterjee*, 6 W. R. X. 97, the second ground of special appeal was that, under the above precedent, the defendant was, as regards the lands in suit, a trespasser and a suit for enhancement would not lie. The Court disposed of this ground with these remarks : " On the second point we are clear that the zemindar might, if he chose, have treated the defendant as a trespasser on the excess lands, but *he elects* not so to act, but to admit him henceforth as a tenant. It is true that the form

of action for these lands is incorrect; for, as to them it is not really and essentially a suit for enhancement, but one for a kabulyat and for a determination of the rate at which the same should be delivered, no rent at all having hitherto been paid for these lands by the defendant, and he therefore being not, in legal language, a tenant." In *Rajmohan Mitter* v. *Gurucharan Aich*, 6 W. R. X. 106, it was said: "Then, as to the second ground of special appeal, the special appellant admits that the excess four bighas do not, and did not, belong to the original holding, but have been gradually encroached upon by the raiyat since. This being so, no suit for *enhancement* could lie. A raiyat who holds land in excess of his tenure is a trespasser and not a tenant, and cannot be sued for enhancement of rent which he has never paid. The landlord's remedy is to eject him by process of law, or if he prefer it, to sue for a kabulyat in respect of the excess lands." In *Raja Satya Saran Ghosal* v. *Mohesh Chandra Mitter*, 11 W. R. P. C. 11, their Lordships of the Privy Council remarked: "A suit for enhancement implies such a privity of title or tenure, existing between the parties that a claim to some rent is legally inferrible from it, and there is here proof that the relation is denied to have existed at any time between the parties in respect of these two parcels of land. As to the latter portion where the respondent's title is denied and the right of another zemindar set up, the proper remedy seems to be by a suit in the nature of an ejectment." In *Paran Kissen Bagchi* v. *Monomohini Dasi*, 17 W. R. 34, the remarks of their Lordships of the Privy Council in *Raja Satya Saran Ghosal's* case and the judgment of the High Court in *Roshun Bibi's* case, were quoted with approval and followed. The Court said: "We think that these judgments are to be reconciled with the provisions in section 17, clause 3, Act X of 1859, by our holding that the provisions apply only to cases where there is no question as to what land was included in the original tenure, but there has been some mistake with regard to the measurement, and when the land has been re-measured, it has been found that the tenant had to pay a higher rent than he had been supposed to be liable for." The decision in *Roshun Bibi's* case was, however, disapproved in *Binod Bihari Roy* v. *Masseyk*, 15 W. R. 493, where it was remarked: "We are not prepared to acquiesce in the special respondent's contention that for the excess land, the plaintiff is *only* entitled to treat the defendant as a trespasser (*Roshun Bibi* v. *Biswanath Sarkar*, 6 W. R. X. 57), for, if that were so, any person holding excess land without his landlord's knowledge for a period of twelve years would have held it adversely to his landlord and be entitled to plead limitation against him." In *Guru Das Roy* v. *Iswar Chandra Bose*, 22 W. R. 246, the Court held that the encroacher is to be presumed a tenant till the contrary is shown. Markby, J., remarked: "These judgments (*i. e.*, of the lower Courts) seem to proceed on the ground that any encroachment by a tenant against his land-

lord is presumably a trespass. But under ordinary circumstances, we think, the presumption is the other way. We think the true presumption as to encroachments made by a tenant during his tenancy upon the adjoining lands of his landlord is that the lands so encroached upon are added to the tenure and form part thereof for the benefit of the tenant so long as the original holding continues, and afterwards for the benefit of his landlord, unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit. This is the clear rule of English law, and it is a rule which is supported by reason and principle. In India, where there is a great deal of waste land and where quantities and boundaries are very often ill-defined, there are very strong reasons for the application of such a rule. And the principle upon which the rule is founded is one of general application, namely, that if an act is capable of being treated as either rightful or wrongful, it shall be treated as rightful. Now in the case put, the act of the tenant in taking possession of more land than was let to him, though it may possibly have been a trespass and wrongful, may, in most cases, equally well, have been done with the assent, express or implied, of the landlord, and so have been rightful, and in the absence of any proof to the contrary it is treated as the latter. * * * In *Roshan Bibi* v. *Biswanath Sarkar*, 6 W. R. X. 57, Sir Barnes Peacock expresses his opinion that no rent could be assessed in such a case under section 17 of Act X, 1859 (section 18 of Act VIII B. C. of 1869). But that question was not then before the Court; and we do not know the facts of the case. Possibly, it was a tenure which, as having been held at a fixed rate from the date of the Permanent Settlement, or for some other reason, could not be enhanced. * * * The case in 17 W. R. 34 is distinguishable. That was a special appeal, and the Lower Appellate Court had finally found that the land there did not form any part of the tenure of which enhancement was sought." The decision in *Guru Das Ray's* case was followed in *Nadiyar Chand Shaha* v. *Mia Jan*, Ind. 10 Cal. 820. It was said: "This case, therefore, directly raises the question, what the law of this country is with regard to encroachments made by a tenant *upon his landlord's property*. There is no doubt whatever, that by the English law an encroachment made by a tenant upon land adjoining to, or even in the neighbourhood of, his holding, is presumed, in the absence of strong evidence to the contrary, to be made for the benefit of the landlord. And this rule applies to all land so encroached upon, whether the landlord has any interest in it or not. If a tenant during his tenancy encroaches upon the land of a third person and holds it with his own tenure until the expiration of the tenancy, he is considered to have made the encroachment, not for his own benefit but for that of his landlord; and if he has acquired a title against a third person by an adverse possession, he has acquired it for his landlord and not for himself. This doctrine appears to have been adopted here in the case of *Guru*

Das Roy v. *Iswar Chandra Bose*, as well as in other cases. It is true that by the English law if it could be distinctly proved that the tenant made the encroachment adversely to his landlord, an adverse possession for 12 years might then give the tenant a title by limitation; and probably that would be so in this country. But that was clearly not the case in this instance, because the plaintiff himself in his plaint claims the land in question as part of his taluk (under defendant No. 2) * * * *. It would indeed seem strange if, as a matter of law, a tenant were allowed, *without his landlord's permission*, to appropriate any land which adjoins his own tenure, and then, when his landlord complained of the trespass and required him to give the land up, he were allowed to take advantage of his own wrong, and insist upon retaining possession of it, until the expiration of his tenure. In this particular case, however, it was no part of the plaintiff's case that the zemindar, either expressly or impliedly, had consented to the encroachment. His case, in the first instance, was that the land in question formed part of his original taluk. That has been negatived by both the Courts. He then continued that he had held it adversely, to his landlord; but that, for the reasons already given, we have found to be untenable."

From a consideration of these decisions and of section 157, *post*, the law on the subject of encroachments would appear to be :—(1) When a tenant has encroached upon land of his landlord adjoining his tenancy and set up an open hostile title in himself or in a third person, he is a trespasser, and, if not ejected within twelve years of setting up the hostile title, acquires by adverse possession a right against the landlord. The landlord may, however, within the twelve years, either eject the tenant or elect to accept him as a tenant. If he so elects, he is entitled to additional rent for the encroached land. (2) When a tenant has encroached such land, and there is nothing to show, (the burden of proof being on the tenant,) that he has claimed to hold adversely, his possession is not deemed adverse to his landlord. He cannot plead limitation in defence to a suit for ejectment by the landlord; nor can he acquire a title against his landlord by such possession. But the landlord may elect to accept him as a tenant and claim additional rent for the encroached land; and that either within 12 years or after that period.

There has been yet no rulings regarding the landlord's right to land belonging to a third person and encroached upon by his tenant. The English law is likely to be followed that, when the tenant acquires a right to such land by adverse possession, the land is to be deemed a part and parcel of his tenancy; and in the event of the termination of the tenancy the land passes on with it to the landlord. It would appear that the landlord has no right to eject the tenant from such land. There is scarcely any reason why the landlord should be able to get possession of the encroached land on the 13th year, when on the 11th, it was the tenant, and the tenant alone, who would be liable for damages in a suit by the person whose land

has been encroached upon. It would also appear that the landlord cannot claim additional rent for such encroached land (*Mirza Mahamad Ali* v. *Radharaman Mandal*, 4 W. R. X. 18).

In this connection may be noticed the series of rulings that have held that when the tenant claims to hold a portion of the land for rent, of which a suit is brought, as lakhiraj, the burden is on the landlord to show that such land has paid rent and is khiraji (*Harihar Mukherjee* v. *Gumani Kazi*, 2 Hay, 652, Marsh. 523, W. R. F. B. 115; *Motilal Adduk* v. *Jadupati Das*, 2 W. R. X. 44; *Gangadhar Sing* v. *Bimala Dasi*, 5 W. R. X. 37; *Mrityunjoy Chakravarti* v. *Raja Barada Kant Roy*, 6 W. R. X. 18; *Jageswari Debi* v. *Gadadhar Banerjee*, 6 W. R. X. 21; *Shibnarayan Das* v. *Sidam Das Bairagi*, 6 W. R. X. 45; *Dhanmani Debi* v. *Satrughna Sil*, 6 W. R. X. 100; *Raj Kisore Mukherjee* v. *Harihar Mukherjee*, 10 W. R. 117; *Ambika Charan Mandal* v. *Ramdhan Moherer*, 11 W. R. 35; *Monmohan De* v. *Sriram Roy*, 14 W. R. 285; *see* also *Harihar Mukherjee* v. *Madhav Chandra Babu*, 8 Beng. 566, P. C.; *Arfunnessa* v. *Pyarimohan Mukherjee*, Ind. 1 Cal. 378; *Kailasbasini Dasi* v. *Gokulmani Dasi*, Ind. 8 Cal. 230; *Becharam Mandal* v. *Pyari Mohan Banerjee*, Ind. 9 Cal. 813). There are, however, other rulings which seem to decide the opposite way (*Raja Satya Charan Ghosal* v. *Tarini Churan Ghose*, 3 W. R. 178; *Sridhar Nandi* v. *Brajanath Kundu*, 2 Beng. 211, 14 W. R. 286, note; *Nehal Mistree* v. *Hari Prasad Mandal*, 8 W. R. 183; *Hiraram Bhattacharjee* v. *Ashruf Ali*, 9 W. R. 103; *Bibi Ashrufunnessa* v. *Ananga Mohan Deb Ray*, 5 W. R. X. 48; *Newaz Bandopadhaya* v. *Kali Prasanna Ghosh*, Ind. 6 Cal. 543; *Akbar Ali* v. *Bhya Lal Jha*, Ind. 6 Cal. 666). But, *see* the first five cases considered in 14 W. R. 285 and the last two in Ind. 9 Cal. 813; these rulings, in so far as they really rule in the opposite way, are not binding.

Clause (a). Notice not necessary.—It is no longer necessary as it was under the old law that a notice should be served on the tenant before a suit could be instituted against him for additional rent for additional land.

Clause (b). Reduction of rent for deficiency in the area.—The provisions of this Act regarding reduction of rent on the ground of diminution of area are almost the same as the old law. There were the express provisions of the statutes in respect of raiyats with occupancy-rights. And as regards the other classes of tenants case-law supplied the *lacunae* of the statutes. In *Sheikh Enatulla* v. *Sheikh Elahi Baksh* (W. R. Sp. X. 42), it was held that all tenants were entitled to reduction of rent for diminution of land on principles of natural justice and equity: for instance, a talukdar (*Afsaraddin* v. *Sorashibala Debi*, Marsh. 558; *Dindayal Lal* v. *Massamat Thakur Kunwar*, 6 W. R. X. 24); a patnidar (*Hara Kishen Banerjee* v. *Jay Kishen Mukerjee*, 1 W. R. 299; *Prasanna Kumari Dasi* v. *Sundar Kumari Debi*,

2 W. R. X. 30); a howaladar (*Kamalakant Das* v. *Pogose*, 2 W. R. X. 65); and a mokararidar (*Mohesh Chandra Dutt* v. *Gangamani Dasi*, 2 Hay, 495). In *Ram Charan Baysak* v. *Lucas*, 16 W. R. 279, doubt was expressed whether a talukdar whose tenure had existed from before 1790 had a right to claim abatement on the ground of diluvion. Clause (*b*) now sets at rest all doubt on the point. It must be noted, however, that there are two classes of dependant talukdars who are not tenants under this Act (*ante*, p. 17); they can get remission only if the persons through whom they pay revenue, have got remission under the provisions of Act IX of 1847.

Clause (b). Deficiency in the area.—The deficiency of area for which reduction of rent may be claimed may be due to (1) diluvion (*Afsaraddin* v. *Sorasibala Debi*, Marsh. 558); (2) acquisition of land by the Government (*Mohesh Chandra Dutt* v. *Gangamani Dasi*, 2 Hay, 495, *Gordon Stuart & Co.* v. *Maharaja Mahatab Chand Bahadur*, 2 Hay, 565; *Prasannamayi Dasi* v. *Sundar Kumari Debi*, 2 W. R. X. 30; *Maharaja Mahatab Chand Bahadur* v. *Chitra Kumari Bibi*, 16 W. R. 201; *Dindayal Lal* v. *Massamat Thukroo Kunwar*, 6 W. R. X. 24); (3) resumption as "chakeran" by the Government (*Harakissen Banerjee* v. *Joykissen Mukherjee*, 1 W. R. 299); (4) dispossession by a person having a title paramount or by a person claiming under the landlord (see *Gopanand Jha* v. *Lala Gobind Prasad*, 12 W. R. 109; *Brajanath Pal Chowdhry* v. *Hira Lal Pal*, 10 W. R. 120, 1 Beng. A. C. 87, and other cases cited in note (B) *ante*, p. 143); and (5) dispossession by a person who has a good title, the lessor having none (see *Ranga Lal Sing* v. *Lala Rudra Prasad*, 17 W. R. 386).

Clause (b). Restriction on contracts.—Section 178, sub-section (3), clause (*f*) provides that nothing in any contract made between a landlord and a tenant, *after the passing of this Act*, shall take away the right of a raiyat to apply for a reduction of rent under section 52. Under the old law, though there was no restriction on them, contracts stipulating that the tenant would not be entitled to claim reduction were always strictly construed. In *Uma Sankar Sarkar* v. *Tarini Chandra Sing*, Ind. 9 Cal. 571, the lease contained a provision that the patnidar should "make no objection on the score of diluvion or any other cause to pay the rent fixed or reserved by the kabulyat." It was held that the patnidar was entitled to reduction of rent on the ground that part of the land was acquired by Government for public purposes. So, also, in *Watson* v. *Nistarini Gupta*, Ind. 10 Cal. 544, where the lease stipulated that there would be no reduction for "flood and drought, death and flight, alluvion and diluvion, profit and loss," the tenant was held entitled to reduction on the ground that land was taken by Government, for the area lost was not by natural causes, but by *vis major*. In *Mohesh Chandra*

Dutt v. *Gangamoni Dasi*, 2 Hay, 495, the tenant was held entitled to reduction, though the pottah contained no provision to that effect and though his landlord had not then obtained reduction from the superior landlord.

Clause (b). Compensation and reduction.—Where land is acquired by Government for public purposes and compensation is granted for the land, the fact that the tenant obtained a portion of the profits, is no ground to deny him reduction of rent. He is entitled to both, a share of the compensation and reduction of rent (*Maharaja Mahatab Chand Bahadur* v. *Chitra Kumari Debi*, 16 W. R. 201; *Gadadhar Das* v. *Dhanpat Sing*, Ind. 7 Cal. 586).

"The value paid by Government when it acquires land, is not the value of any one interest but the aggregate value of all interests. The zemindar is entitled to receive the value at which he could sell the zemindari right; a patnidar to the value of his patni interest; a lease-holder is entitled to be paid for the injury done him by taking the land comprised in the lease; and the raiyat is entitled to be paid for the injury caused him by the deprivation of his land. The Government award must in equity, cover all these interests."

Clause (b). Reduction may be claimed in suits for arrears of rent.—A tenant may either sue under this section for reduction of rent, or he may, when sued by the landlord for arrears of rent, claim a reduction by way of set-off (*Mohesh Chandra Dutt* v. *Gangamani Dasi*, 2 Hay, 495; *Afsaruddin* v. *Sorashibala Debi*, 2 Hay, 654, Marsh. 558; *Din Dayal Lal* v. *Thakroo Kunwar*, 6 W. R. X. 24; *Gour Kisore Chandra* v. *Banamali Choudhuri*, 22 W. R. 117). But if a reduction is claimed in a suit for arrears of rent and only partially allowed, the tenant may not bring a fresh suit for establishing his right to get a reduction for the remainder, the issue being *res judicata* between the parties (*Nobo Durga Dasi* v. *Fyaz Baksh Choudhuri*, 24 W. R. 403).

Clauses (a) and (b). Limitation.—A tenant's possession of excess land of his landlord is not deemed adverse to the latter, unless the tenant sets up an open hostile title. The tenant cannot, therefore, plead limitation to a claim for additional rent for additional land. Similarly the landlord cannot plead a limitation to a tenant's claim for reduction of rent for deficiency of land. A claim for rent being a recurring cause of action, a tenant is entitled to set up against it for any particular year, any right which he has for reduction, notwithstanding that he has paid full rent for several previous years (*Maharaja Mahatab Chand Bahadur* v. *Chitra Kumari Debi*, 16 W. R. 201).

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to—

(*a*) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding;

(*b*) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord;

(*c*) the length of time during which the tenancy has lasted without dispute as to rent or area; and

(*d*) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

This is new.

This sub-section enumerates the considerations which should guide the Courts in cases where there may be a dispute as to the area for which the tenant has been paying the rent. What is to be found out is whether the apparent increase is the result of encroachment on the part of the raiyat, or of erroneous entries in the books of the landlord; whether, in short, the entire area was really considered in fixing the previous rent or not.

The following illustrations, given in the Draft Bill, by the Rent Commission (R. C. I. 126), will be useful :—

(*a*) A, a ryot, holds his land *at one rupee per bigha* and has been paying an annual rent of Rs. 17 as for 17 bighas. A measurement shows that he holds 23 bighas, and the whole of this land is of the same quality. His rent can be increased to Rs. 23.

(*b*) A, a ryot, has a holding usually described, in the *jama-wasil-baki* papers and the ryot's receipts, as comprising 27 bighas, and the rent paid for which is Rs. 33-12. *No measurement of this holding has at any time been made*, and there is no allegation that its area has been diminished by diluvion; but 15 bighas of land clearly distinguishable are shown by measurement to have been added to the holding by alluvion. A is liable to pay additional rent for the 15 bighas.

(*c*) A was let into possession of a holding in 1860 under a written lease, which describes the holding as comprising 37 bighas of land, and *gives the boundaries*. The land is situated in a cultivated village, and the boundaries are *ascertainable and definite*. In 1880, the land within these boundaries is measured and found to be 45 bighas. A is not liable to pay

additional rent in respect of the 8 additional bighas found to be within the boundaries stated in his lease.

(*d*) A was let into possession of a holding in 1850 under a written lease, which describes the holding as comprising 50 bighas, more or less, and *gives the boundaries*. The land is situated in a village which, in 1850, consisted chiefly of uncleared *jangal*, and the boundaries are *inexact and indefinite*. In 1880 A is found to be in possession of 200 bighas of cultivated land, to which the description by boundaries is applicable. A is liable to additional rent.

(*e*) A held and cultivated 30 bighas of land at one rupee per bigha, from 1863 to 1875. The land so regularly cultivated by him up to 1875 was then bounded on the east by uncleared waste land belonging to A's landlord. In 1876 A began to encroach upon this waste land, and in 1880 is found to be, without the acquiescence of his landlord, in possession of 20 bighas of this waste land in addition to the 30 bighas originally held and cultivated by him. A's landlord may either treat A as a trespasser in respect of these 20 bighas, and sue to eject him therefrom, and to recover from him mesne profits in respect thereof; or, may accept A as his tenant for the 20 bighas as an addition to A's original holding of 30 bighas. In the latter case, A shall be liable to pay additional rent for the 20 bighas of land.

Clause (a).—This clause is in accordance with case-law. Where the tenancy has been described to be within accurate and ascertained boundaries, there is no reason why the tenant shall pay an increased rent or claim a reduction, even if, on measurement, the land is found to be in excess or to be deficient in quantity.

In *Pahalwan Sing* v. *Maharaja Maheswar Baksh Sing Bahadur*, 9 Beng. 169, it was remarked by the Judicial Committee: "He (the plaintiff) is to recover it according to the boundaries given in the plaint. It is true, it goes on to specify the quantities, but it turns out that those quantities are not strictly accurate. Then the question is, which is he to recover, the quantities or according to the boundaries given in the plaint? Their Lordships think that it must be interpreted as if it were a conveyance of land stating the boundaries, and then saying that it contains so many acres; of course, the real conveyance would be of the land within the boundaries, and it would be a mere false description that there was some slight mistake in the quantities. Their Lordships think that that principle ought to be applied to the case, because they find it among the rules that prevail in the Courts in India." In *Tripp* v. *Kali Das Mukerjee*, W. R. Sp. X. 122, the land leased "consisted of several old holdings, some of which had been abandoned by the former occupiers, and one of which had previously been in the occupation of this defendant. The description of the quantity in the kabulyat purports to be taken from other old measurement papers. It is probable that the land itself, the subject of the lease, must have been known to the defendant. Under these circumstances, we think, it would be no defence to this suit for rent even if the defendant could succeed in establishing that the quantity of land is in

fact not so great as the quantity mentioned in the kabulyat. The defendant, probably knowing the land for which he was in treaty, there is no reason to suppose that he was misled, or that he has not substantially that land, and he cannot now evade the payment of the rent contracted by availing himself of the error or misdescription (if it exists) of the actual quantity given in the kabulyat."

Clause (c).—In *Ram Charan Baisak* v. *Lucas*, 16 W. R. 279, it was remarked: "Payment of the full rent, year by year, more than 30 years after the lands are said to have been washed away, would be strong evidence that no such claim was in the contemplation of the parties when the contract was originally made." In *Ramnarain Chakravarti* v. *Poolin Behari Lal Sing*, 2 Cal. 5, the darpatnidars claimed set-off in the nature of reduction of rent on the ground that land had been taken by Government 24 years previously, for the purpose of a railway. The Court held that the Limitation Act did not in terms prevent a defendant from setting up such a defence, but the great delay in the case, coupled with the facts of the case, disentitled the defendants to any relief as claimed. The defendants in this case did not claim any reduction till the landlord's interest was represented by a minor: the opening of the railway might have increased the value of the land; and some arrangements might have taken place, the evidence of which at such distance of time might not be forthcoming.

Clause (d).—This clause is in accordance with the existing case-law. In *Babun Mandal* v. *Shib Kumari Barmani*, 21 W. R. 404, the Court remarked: "It cannot be said that because of some difference in the length of the measuring pole in use at different periods, the area of the land in the sense of this section (sec. 18 of Act VIII of 1869) has been altered." It is only when the land is shown to have altered in area according to the standard in use at the time of the creation of the tenancy that any alteration in the rent may be claimed.

(3) In determining the amount to be added to the rent, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure, and shall not in any case fix any rent which under the circumstances of the case is unfair or inequitable.

This is new.

In *Jagat Chandra Dutt* v. *Panioty*, 6 W. R. X. 48, it was held that when a talukdar is liable to pay, for accretions to the taluk, rent at the ordinary neigh-

bouring rates for similar lands, there should be a deduction of 10 per cent. for collection charges, and 10 per cent. for talukdari profits. It should be remembered that, under the old law, the profit was a fixed 10 per cent., now that is the minimum (sec. 7, sub-sec. 3 and note, *ante*, pp. 42-3). There are a number of decisions under the old law which laid down that the additional rent should be at a rate in proportion to that paid for the parent tenancy (*Gopal Lal Tagore* v. *Kunar Ali*, 6 W. R. X. 85 ; *Nistarini Dasi* v. *Bonomali Chatterjee*, Ind. 4 Cal. 941 ; *Golam Ali* v. *Kali Krishna Tagore*, Ind. 7 Cal. 479 ; *Laidley* v. *Bishu Charan Pal*, Ind. 11 Cal. 553). But if the additional land was of better or worse quality, the additional rent might be higher or lower than the proportionate rent (*Churamani Dey* v. *Howrah Mills Company*, Ind. 11 Cal. 696). The principle of this last ruling has been fully incorporated in this sub-section by directing that the Court shall have regard to the rates payable by tenants of the same class for lands of a *similar description and with similar advantages* in the vicinity.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

This is new.

This sub-section follows section 5 of Act IX of 1847 (*ante*, p. 157, note), and the ruling in *Brojanath Pal Chowdry* v. *Hira Lal Pal*, 1 Beng. A. C. 87, 10 W. R. 120. It was in this case laid down—" When once it is determined that a tenant is entitled to an abatement of rent, in consequence of the subject of the demise having been diminished, the only thing that requires to be settled is, what was the portion of the original rent, that was referable to the portion of the tenure which has disappeared. It might be, of course, that the original contract specified in terms how much rent was reserved out of the *mahal* in question. In this instance, however, I understand that there is nothing in the pottah to show that the rent was apportioned in parcels to the different parts of the whole land held in patni. It seems to me, therefore, that the only way to arrive at a conclusion as to how much of the whole rent is fairly attributable to this particular portion, is to deal with it as a matter of proportion only ; that is, such a sum ought to be deducted from the whole rent as would bear to that whole rent the same proportion as the annual value of the portion of the land which has disappeared bears to the annual value

of the land originally leased." "Holding," in this sub-section as well as in sub-section (1), clause (*b*), would appear to include the interest of an under-raiyat.

Payment of rent.

Instalments of rent.

53. Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

This is new.

Under the old Acts the instalments in which rent was to be paid, had to be specified in the pottahs (section 2 of Act X of 1859, same section of Act VIII B. C. of 1869); and if not so specified, they were to be paid according to established usage (section 20 of Act X of 1859, section 21 of Act VIII B. C. of 1869). So that, where there was no agreement on the point, nor any established usage, rent became due only at the end of the year. This is now altered, and in the absence of agreement or established usage rent falls due on the last day of each quarter of the year. This is an attempt to introduce into this country the English system of paying rent on quarter-days.

Though this section saves agreements and established usages, no suit for arrears of rent may be instituted within three months of a previous suit (sec. 147); agreements and established usages under which rent is to be paid oftener than quarterly cannot, thus, be enforced by law. Further, subject to contract made before the passing of this Act, an arrear of rent shall bear interest only from the end of the quarter in which it falls due (secs. 67 and 178). The result is, that arrears of rent are recoverable only at the interval of three months, and there is no penalty for withholding rent till the end of the quarter-day, except in case where there is a contract made before the 14th March, 1885, to pay interest on arrears falling due oftener than quarterly.

Subject to agreement.—In a suit for rent where the kabulyat stipulated that payment should be made in monthly kists the raiyat was held under the old law to be bound by its terms, notwithstanding that the landlord had not strictly enforced the condition previously (*Pyari Mohun Mookerjee* v. *Brojo Mohun Bose*, 21 W. R. 36; *Ibid.* v. *Ibid.*, 22 W. R. 428). These rulings are modified to the extent that, though the landlord may claim rent falling due before quarter-days, he may not bring successive rent-suits within three months of each other.

Established usage.—These words do not mean the established usage between the parties, but the established usage of the pergana (*Chaitanya Chandra*

Roy v. *Kedarnath Roy*, 14 W. R. 99). There is an established usage in many perganás that rent does not fall due till the landlord has celebrated the *punyaha*.

Agricultural year.—*See* note under section 3, clause 11, *ante*, pp. 22-3.

Money-rent.—This section is limited to only money-rents. Produce-rents are payable when the produce is gathered or at such other times as are agreed on between the parties, or, where there is no agreement, according to local custom.

Where a person is bound by agreement to pay the Government revenue through another, he is liable, only to pay the money due in instalments according to the Government rules for the payment of revenue (*Giridhari Sing* v. *The Court of Wards*, 10 W. R. 368). Money so paid is not rent, in the meaning attached to the word in this Act.

Time and place for payment of rent.

54. (1) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlord's village-office, or at such other convenient place as may be appointed in that behalf by the landlord:

Provided that the Local Government may from time to time make rules, either generally or for any specified local area, authorizing a tenant to pay his rent by postal money-order.

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

Old Acts.—Sub-sections (1) and (2) are new. Sub-section (3) replaces a portion of section 20 of Act X of 1859 and of section 21 of Act VIII B. C. of 1869.

Sub-section (1).—The rule in this sub-section has been taken from the law as to payment of Government revenue (sec. 6, para. 4 of Act XI of 1859).

Sub-section (2).—It was held in *Rani Sarat Sundari Debi* v. *The Collector of Mymensing*, 5 W. R. X. 69, that it was for a debtor to pay his debts due at fixed time, not for the creditor to seek payment; and that when a tenant pleaded tender of payment as a ground for not being saddled with interest, it was for him to show that he made a tender at the proper place to his landlord.

It is only the big landlords who have got any village-offices for collection of rent. Payment of rent to small landlords are made at their houses, or their agents go to different villages and collect rent from the tenants. In the last case the agents generally hold office at the house of one of the substantial tenants and send for the others. The words "such other convenient place" probably cover these cases.

Suppose, a small landholder leaves his village and goes to live in Benares, and has no agent to collect his rents. His tenant, it will be seen from section 62, has no right to deposit rent in Court. Does this sub-section allow the tenant to plead in a suit for arrears of rent that he could not pay rent because the landlord has no village-office or other convenient place to pay rent, and claim non-liability to pay interest on arrears and costs of the suit? Under the next sub-section any instalment or part not paid at or before the time it falls due, is deemed an arrear. That sub-section is not subject to the landlord's having a village-office or a convenient place to receive rent. It is submitted, that when a landlord has no village-office or a place within convenient distance to receive rent, he is not entitled to interest till he has notified the fact of his being ready to receive the arrears at a convenient place; nor is he entitled to costs of a suit for arrears of rent if he brings any, without giving such notice.

Proviso to sub-section (2).—The Local Government has not yet framed any rules under this proviso. The Committee appointed to consider and advise on the rules made under this Act, remarked: "It appears to us that the experiment of permitting rent to be paid by postal money-order may well be deferred, till the plan of paying Government revenue through this agency has been found on trial to work successfully." When the Government shall have framed rules under this proviso, the difficulties of tenants as pointed out in the last paragraph will be removed.

Sub-section (3). Not duly paid.—The due *time of payment* is, under sub-section (1), before sunset of the day on which it falls due. Rent remaining unpaid on the last day, is therefore an arrear. This follows the Full Bench ruling of *Kasi Kant Bhattacharjee* v. *Rohini Kant Bhattacharjee*, Ind. 6 Cal. 325, which overruled *Umesh Chandra Bose* v. *Surja Kant Roy Chowdry*, Ind. 5 Cal. 713, and held that an arrear fell due on the last day of the month in which it was payable, and not on the first day of the following month.

Rent is duly paid (1) if paid to one of several joint proprietors (*Massamat Akbarennisa* v. *Massamat Jaharennissa*, 3 R. J. P. J. 137; *Adyait Narain Sing* v. *Hudson*, 2 W. R. X. 15); (2) if paid to a third person, when authorised to do so by the landlord (*Massamat Joy Kooer* v. *Maharaja of Durbhanga*, W. R. Sp. X. 112); (3) if paid to the Collector for satisfaction of the landlord's arrears of Government

revenue (*Hills* v. *Umamayi Barmani*, 15 W. R. 545); and (f) if paid in advance to the predecessor in interest of the landlord (*Ramlal Shaha* v. *Rao Jogendra Nardin Roy*, 18 W. R. 328).

Appropriation of payments.

55. (1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

This is new.

The Indian Contract Act IX of 1872 contains the following rules about appropriation of payments :—

"*Section* 59.—Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

"*Section* 60.—Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

"*Section* 61.—Where neither party makes any appropriation, the payment shall be applied in discharge of debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionally."

These general rules of the Contract Act are now limited by the provisions of this section as regards payment of rent. It will be noted that under the former the intimation by the payer may be either express or implied, under the present Act such intimation may be only by *declaration*, i. e., express.

It will be further noted that the present section contemplates only payments made for the same tenancy. Where the tenant holds two or more tenancies under the same landlord, the rules of the Contract Act will guide in determining

the tenancy for which the payment was made, and, therefore, implied intimation, if any, will be taken into consideration.

An equitable presumption is made in other countries to the effect, that where there are two debts, one of which carries a higher interest or is secured by a more onerous penalty, payments made without any declaration, are deemed to be in liquidation of the more burdensome debt.

The omission in this section to provide for implied understanding and for the presumption last noted, is considerably remedied by the provisions of sections 56 and 58. Under sub-section (1) of this section the landlord is bound to credit the payment according to the declaration of the tenant. He may refuse to accept rent, but, if he accepts, he has no option to credit it otherwise than as declared by the tenant. The receipt to be granted under the next section will contain sufficient information regarding the tenancy and the year for which the rent is paid: and the grant of the receipt is secured by penalty under section 58.

Rulings under the old Acts.—A general payment in one year without specification that it was in satisfaction of the rents for that year, may be credited, at the option of the landlord in satisfaction of the arrears of the previous year (*Ahmutty* v. *Brodie*, W. R. Sp. X. 15; *Jadu Mahapatra* v. *Ramanath Roy*, 3 R. J. P. J. 162). This rule has now been embodied in sub-section (2). Surplus payments in any given year are to be presumed to have been made in satisfaction of arrears for past years and not payments in advance for subsequent years (*Taramani Dasi* v. *Kalicharan Sarma*, W. R. Sp. X. 14). If the tenant shows payments of rent in a given year fully satisfying the claim for that year, it is to be presumed that all previous claims have been satisfied: to enable the landlord to carry, to the credit of any year previous to that year, any payment made subsequent to that year, the burden of proof is on him to show that any rent was in arrear previous to that year (*Rani Sarat Sundari Debi* v. *Brodie*, 1 W. R. 274). Payments in each year is to be presumed to be for the current year (*Taramani Dasi* v. *Kalicharan Sarma*, W. R. Sp. X. 14). But the presumption is rebutted if the landlord's agent, to whom the payments were made, state on oath that they were for a previous year, and the tenant abstains from giving any evidence on the point (*Bibi Syefun* v. *Rudra Sahay*, Ind. 7 Cal. 582).

Receipts and accounts.

Tenant making payment to his landlord entitled to a receipt.

56. (1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(2) The landlord shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II to this Act as can be specified by the landlord at the time of payment:

Provided that the Local Government may from time to time prescribe or sanction a modified form either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

This is new.

Signed by the landlord.—The definition of signed in this Act is exactly the same as that in the Civil Procedure Code:—"'Signed' includes marked when the person making the mark is unable to write his name; it also includes 'stamped' with the name of the person referred to." It has been held under the Civil Procedure Code that the words 'person referred to' means 'referred to in any section of the Act.' And it is not a condition precedent to such person being able to use a stamp that he should be unable to write his name (*Maharaja of Benares* v. *Debi Dayal Noma*, Ind. 3 All. 575). Strictly therefore a rent receipt may be stamped by a person able to write his name. But probably the word 'signed' should be here construed not to include 'stamped' if the person is able to write. At least the practice in Bengal is not to stamp but to sign when the person granting the receipt is able to write. And it will be only harmful to interfere with that sound practice. The receipt may be signed by the agent of the landlord authorized by writing in that behalf (sec. 187, sub-sec. 3). If there are two or more joint landlords the receipt must be either by them all, or by their *common* authorized agent (sec. 188). A receipt signed by the *different* agents of two or more joint landlords would thus appear to be defective. The receipt may also be signed by the common manager if one is appointed under section 95.

Stamp.—A receipt for any sum of money exceeding Rs. 20 requires a stamp of one anna (art. 1, Sched. I of Act I of 1879). But a receipt granted for any payment of rent by a cultivator on account of land assessed to Government revenue is exempt from stamp duty (art. 15, cl. *c* of Sched. II). Receipts granted to cultivators

for rent of land in revenue-free estates, whether by the lakhirajdars or tenure-holders under them, are therefore liable to be stamped if for more than Rs. 20.

When a receipt is tendered in evidence duly stamped, the Court is not bound nor is it at liberty to allow the parties to go into evidence to show at what time the document was stamped (*Srimati Noor Bibi* v. *Sheikh Ramzan*, 24 W. R. 198; *Kali Charan Das* v. *Nobo Kristo Pal*, 9 Cal. 272).

Particulars in the form in Schedule II.—The landlord may or may not use the form of receipt in Schedule II. All that is necessary is that the receipt used gives all the particulars in the form given in the Schedule. These details are—

1. The name of the tenant and that of his father;
2. The situation of the tenancy (estate, village and thana);
3. The area of the tenancy which pays money-rent and the amount of such rent;
4. The area of the tenancy which pays rent in kind and the quantity of such rent;
5. The rent of jalkar, bankar or phalkar, if any, within the tenancy;
6. The amount of cesses payable for the tenancy;
7. The date of payment;
8. The amount paid or quantity delivered and on what account, *i. e.*, whether for money-rent, or for produce-rent, or for jalkar, &c., or for cesses;
9. The year and kist for which the payment is made.

The old law required that receipts for rent should specify the year or years on account of which the rent was acknowledged to have been paid, and it was for the tenant to say on account of what year the payment was made. In practice, payments were generally credited in a loose way to (*hál bakeyá*) "current demands and arrears." The result was that these receipts were no guide to the Courts in determining the amount of arrears due for any particular year. Further, where the tenant held more than one tenancy under the same landlord, the receipts rarely shew for what tenancy the payment was made. Payments were made during the whole year generally, without specifying any tenancy, and account was made up at the end of the year. A tenant pleading payment of a certain sum could be met by the landlord by stating that the payment had been credited for another tenancy. Thus an amount of uncertainty and difficulty was introduced into a simple question of fact. Moreover, the loose way in which receipts were written on scraps of paper in no specified form, afforded tenants great facilities for fabricating receipts for sums not really paid.

These considerations led the Behar Committee to recommend that the receipts should contain specific informations regarding the points detailed in the form, and that they should be kept in counterfoil. And their recommendation was supported by the Rent Commission.

It will be noticed that in the form in Schedule II the word "holding" is used instead of "tenancy." This is clearly an inadvertence; and the word "holding" must be understood as equivalent to "tenancy," and not in the strict meaning given in section 3, clause 9. It has been argued that the particulars detailed in the form are specially adapted to holdings, and the word "holding" should therefore be strictly interpreted. But this section requires the landlord to grant receipt to "*every tenant*" containing the particulars specified in the form, and section 58 provides for the penalty for withholding such receipt. It can scarcely be supposed that the Legislature intended to abolish the penalty for withholding receipts from tenure-holders and under-raiyats, which has existed from 1793; or that, if they did intend, they would effect the abolition by a vague word in a "form" in the Schedule; which, again, may be modified at any time by the Local Government.

As can be specified by the landlord.—Of the particulars shown in the form, it will be difficult for the landlord always to specify the area. If the area is omitted and the omission is proved to be due to an absence of information on this head in the landlord's sherista, it will be no ground for applying the presumption in sub-section (4) against the landlord. Suppose, A holds a patni of 20 villages under B, who has never measured the villages. B's omission to give the area will be no ground for raising the presumption in sub-section (4) against him. Nor will there be any presumption where the parties have a *bonâ fide* dispute as to the area of the tenancy. It is where the particular on this head is wilfully and fraudulently omitted that the presumption will arise. The other particulars may generally be given, and any omission of them, if unexplained, will raise the presumption against the landlord.

As can be specified at the time of payment.—Where the rent is one in kind fixed in proportion to the actual produce of the land, the quantity of such rent payable cannot be specified before the different crops of the different lands of the holding have been gathered.

Sub-section (4).—The reason of this sub-section is that the landlord may not, by fraudulently omitting the particulars in the receipt, put a difficulty in the way of the tenant to prove the rate of rent and the amount paid. If he omits the particulars, the burden is shifted on him to show that any arrears are due.

Tenant entitled to full discharge or statement of account at close of year.

57. (1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full

discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive within three months after the end of the year a statement of account specifying the several particulars shown in the form of account given in Schedule II to this Act, or in such other form as may from time to time be prescribed by the Local Government either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

This is new.

Penalties and fine for withholding receipts and statements of account and failing to keep counterparts.

58. (1) If a landlord without reasonable cause refuses or neglects to deliver to a tenant receipt containing the particulars prescribed by section 56 for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(2) If a landlord without reasonable cause refuses or neglects to deliver to a tenant demanding the same, either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year prescribed in section 57, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord without reasonable cause fails to prepare and retain a counterfoil or copy of a receipt or statement as re-

quired by either of the said sections, he shall be punished with fine which may extend to fifty rupees.

Old Acts.—Sub-section (1) replaces a portion of section 10 of Act X of 1859 and of section 11 of Act VIII B. C. of 1869. Sub-sections (2) and (3) are new.

Under the old acts the tenant was entitled to recover damages not exceeding double the amount of rent paid, if receipt was *withheld* or did not specify the year for which the rent was paid. Under the present Act the tenant is entitled to *penalty* not exceeding double the amount of rent paid, if the landlord *refuses* or *neglects* to grant receipt *without reasonable cause.*

Penalty.—This word has been substituted for the word "damages" in accordance with the ruling in *Jaheradhin Mahamad* v. *Debi Prasad Sing*, 13 W. R. 391. It was there contended that withholding a receipt for rent paid was a case of *injuria sine damno*, of a violation of a strict legal right which, however, did not cause any damage; and that only nominal damages ought to be granted. But the Court held that damages for withholding receipts were "really damages in the shape of a *penalty* in order to compel a zemindar to do justice to his raiyat."

Without reasonable cause.—These words were added to these sub-sections in order to exclude cases where the tenant neglects to take receipt, or where the landlord is unable to grant it, but has no fraudulent intention, *e.g.*, where an illiterate raiyat or his widow has an under-raiyat.

Sub-section (3).—It is not clear what steps should be taken and in what Court, to have a landlord punished for failure to keep receipts in counterfoil. The words "shall be punished with fine" would show that the Criminal Court has jurisdiction. On the other hand, everywhere in this Act, where any Court or Officer other than the Civil Court has been given jurisdiction, the Court or the Officer has been specially mentioned. And this sub-section is only an acceptance, though in a very mild form, of a recommendation of the Behar Committee, that no suits for arrears of rent would be maintainable, unless the plaintiff filed along with the plaint the counterfoil of receipts kept by him.

It is further an open question whether the Court, whatever it may be, can take cognizance of a failure to keep counterfoil receipts of its own motion, or if there must be a complaint by a tenant and prosecution by him.

Limitation.—It will be seen that the limitation under sub-section (1) for a suit for withholding a rent receipt is three months, while that, under sub-section (2), for a suit for withholding an account or a full discharge, is no less than nine months. The former was changed from six to three months by amendment in Council; the latter has been left what it was.

Any rent paid by the tenant.—Penalty is recoverable only in respect of money paid to the landlord as rent. It is not recoverable in respect of money paid by the tenant, to protect himself against the revenue sale of the superior estate, into the Collectorate (*Samina Bibi* v. *Kailas Chandra Roy*, 6 W. R. X. 79); nor in respect of money paid to a landlord by an inferior tenant, the latter being presumed not to understand the state of accounts between the parties (see *Bibi Syefun* v. *Rudra Sahai*, Ind. 7 Cal. 582).

Landlord liable for the act of the agent.—The landlord will be liable for the refusal or neglect of his agent under this section. It was remarked in *Rashmani Debi* v. *Ramjay Shaha*, 2 Hay, 516, "it is suggested that Rashmani was not actually cognizant of the receipt of these particular sums of rent. To that it may be answered, that the act of her agent is her act, for which she must be held responsible in a civil suit."

Local Government to prepare forms of receipt and account.

59. (1) The Local Government shall cause to be prepared and kept for sale to landlords at all sub-divisional offices forms of receipts with counterfoils and of statements of account suitable for use under the foregoing sections.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit.

This is new.

It is at the discretion of the landlord to use the forms kept for sale at sub-divisional offices under the provisions of this section. It is not even essential that the landlord should use printed forms. All that is essential is, that the receipts and the statements should substantially contain all the informations specified in the Schedule II. It will generally be found convenient to use the prescribed form.

Effect of receipt by registered proprietor, manager or mortgagee.

60. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act VII B. C. of 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorized in that behalf, shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

This is new.

The first portion of the first paragraph of this section is almost the same as section 79 of the Land Registration Act VII B. C. of 1876. The latter portion develops the rule contained in section 78 of that Act. Section 78 provides that the tenant is not bound to pay rent to any one who is not a registered proprietor or for any share for which his name has not been registered. In *Ram Krishna Das* v. *Sheikh Harain*, Ind. 9 Cal. 517, 12 Cal. 141, Garth, C. J., observed :—"It is contended that, under the provisions of that section (sec. 78 of Act VII of 1876), the registered owner of a revenue-paying estate has a right to sue the tenants for rent, although he cannot prove a good title to the estate of which he is the registered owner. We think the section does not say or mean anything of the kind. It is true that the owner of the estate cannot sue for rent *unless he is registered*; but it by no means follows that one who is not the true owner can sue, because he is registered. Speaking for myself I heartily wish it were the law, that the registered owner, and the registered owner only, was entitled to sue the tenants for rent, and that, not only as regards revenue-paying, but all other estates." The rule has been developed in the way indicated in these remarks, and this section entitles the registered proprietor to succeed in a suit for rent without having to prove a good title to the estate, of which he is the registered owner.

Suppose, A, a registered proprietor of an estate, sues for rent a tenant, B, whose land is admittedly situate within that estate and its rent payable to the proprietor of such estate. B got the tenancy from C, who claims to be the proprietor, but who has not yet succeeded in having his name registered under Act VII B. C. of 1876. B cannot, under this section, plead that rent is not payable to A, but to C. And A is entitled to have a decree for rent. If C sues B for rent, though B may not deny C's title to the estate under section 116 of the Evidence Act, he may defeat C's claim, under section 78 of Act VII B. C. of 1876, by proving that C is not the registered owner.

Deposit of rent.

By Act XX of 1885, the operation of this sub-chapter was postponed till the 1st of February, 1886. The Act runs as follows :—

"Whereas it is provided by the Bengal Tenancy Act, 1885, that that Act shall come into force on such date as the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, appoint in this behalf;

"And whereas, in exercise of the power thus conferred, the Local Government, with the previous sanction of the Governor-General in Council, has, by a notification in the local official Gazette, appointed the first day of November, 1885, as the date on which the said Act is to come into force;

"And whereas it is convenient that certain portions of the said Act relating to deposits of rent and distraint should not come into force until a later date;

"It is hereby enacted as follows:—

"1. Notwithstanding anything contained in the said notification—

"(*a*) the provisions of sections 61 to 64, both inclusive, and of Chapter XII, of the said Act, except such of those provisions as confer powers to make rules, shall come into force on such date, not later than the first day of February, 1886, as the Local Government, after the passing of this Act, may, by notification in the local official Gazette, appoint in this behalf, or, if no date is so appointed, on the first day of February, 1886, and not before;

"(*b*) until those provisions come into force, the enactments specified in Schedule I annexed to the said Act shall, in so far as they relate to deposits of rent and distraint, continue in force, and all references to those provisions in other portions of the said Act shall, so far as may be, be read as if they were made to the corresponding provisions of the said enactments."

The postponement was necessary, as rules under the Act could not be framed before its commencement; and, under section 190, such rules had to be published in the *Gazette* at least one month before they were finally considered. It was apprehended that inconvenience might be felt, if the provisions of the old Acts relating to deposits of rent and distraint were repealed, and the new provisions were in force without the rules by which it was intended to supplement them.

Application to deposit rent in Court.

61. (1) In any of the following cases, namely:—

(*a*) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it:

(*b*) when a tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(*c*) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or

(*d*) when the tenant entertains a *bonâ fide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court the full amount of the money then due.

Old Acts.—Section 4 of Act VI B. C. of 1862; section 46 of Act VIII B. C. of 1869.

Under the old Acts, the tenant's right to deposit rent was limited to the only case when he had tendered the rent to his landlord, and the latter had refused to take it or to grant a receipt for it in full. Three more classes of cases have now been added (clauses *b*, *c* and *d*), in which the tenant may deposit the rent in Court.

Money-rent only.—It is only money-rent that may be deposited. If the landlord neglects or refuses to appraise or divide rent in kind, the tenant's remedy is by application under section 69, *post*.

Tenant.—It is only the recognized tenant who has the right to make a deposit (*Duli Chand* v. *Meher Chand Shahu*, 8 W. R. 138). A permanent tenure-holder or a raiyat at fixed rates, acquiring his right by voluntary transfer, whose transfer has not been registered under sections 12 and 13, has no right to make a deposit. An occupancy-raiyat, acquiring his right by transfer, has a right to make a deposit. In case of an invalid transfer of an occupancy-right, the landlord is not bound to take the rent deposited by the transferee.

Clause (a). Tenders money.—The tender must be at a proper place and to a person authorized to receive the rent (*Isan Chandra Ray* v. *Khajeh Ahsanullah*, 16 W. R. 79).

Refuses to grant a receipt for it.—A rent receipt now specifies certain particulars about the tenancy. So that if there is a dispute as to the area, or the amount of rent or cesses payable, or on any other point, the landlord being willing to grant a receipt according to his figures, the tenant is not bound to accept such a receipt, but he may deposit the rent.

Clause (b).—The tenant's right to deposit rent on the ground that he believes that his rent will not be received is limited to the only case when the tenant's belief is dependent on the fact of his rent having been refused or a receipt withheld on a previous occasion. So that when a tenant has been disputing with his landlord for a number of years and is afraid to go to the landlord to pay his rent, he cannot make a deposit before he has made a tender. But can he send the money in a registered letter with his declaration regarding year and instalment for which the rent is tendered and with all other necessary facts? Would that be a sufficient tender? There will be no difficulty, when the Local Government will have made rules to pay rent by postal money-order, and the tenant will have sent the rent by such money-order. But till such rules have been framed, it is not clear whether sending money in a registered letter or by postal order will be a sufficient tender. There seems, however, scarcely any reason to exist, why such a tender will not be deemed sufficient.

Clause (c).—It will be remembered that a receipt signed by the different agents of co-sharers, is not a proper receipt. It must be signed either by the common agent of all or by the co-sharers themselves (sec. 188).

Clause (d).—This clause provides for cases of disputed succession and disputed transfer of the landlord's interest. There is no reason why the tenants should suffer on account of a dispute among the different persons who claim to be the landlord. Under section 474 of the Civil Procedure Code, tenants cannot sue their landlords for the purpose of compelling them to interplead with any persons other than persons making claim through such landlords. This clause was thus essentially necessary to protect the tenants in cases of dispute about succession and other matters.

Tenants who have been in the habit of depositing, in Court, the rent due to a landlord in his sole name are not justified, without receiving notice or order to that effect, in making the deposit in the joint names of that landlord and another (*Rainey* v. *Naba Kumar Mookerjee*, 24 W. R. 128).

Full amount of the money.—These words include not only rent, strictly so called, but also cesses under Act IX B. C. of 1880 (*see* section 47), and sums payable under the Survey Act V B. C. of 1875 (*see* section 38), under the Irrigation Act III B. C. of 1876 (*see* section 83), under the Drainage Act

VI B. C. of 1880 (*see* section 44), and under the Embankment Act II B. C. of 1882 (*see* section 74).

Then due.—A deposit of rent cannot be made under this section before it has become due (*Taramani Kunwari* v. *Jiban Mundur*, 6 W. R. X. 99).

(2) The application shall contain a statement of the grounds on which it is made; shall state—

in cases (*a*) and (*b*), the name of the person to whose credit the deposit is to be entered,

in case (*c*), the names of the sharers to whom the rent is due, or of so many of them as the tenant may be able to specify, and

in case (*d*), the names of the person to whom the rent was last paid and of the person or persons now claiming it;

shall be signed and verified, in the manner prescribed in section 52 of the Code of Civil Procedure, XIV of 1882, by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant; and shall be accompanied by a fee of such amount as the Local Government, from time to time, by rule, directs.

Old Acts.—Section 5, paras. 1 and 2 of Act VI B. C. of 1862; section 47, paras. 1 and 2 of Act VIII B. C. of 1869; and Schedule A of those Acts.

Under the old Acts it was not necessary to verify the application; but the tenant had to supplement it by a solemn declaration in the form in Schedule A. And if the declaration contained any averment which was known or believed to be false, or not known or believed to be true, the declarant was liable to be criminally punished for giving or fabricating false evidence. Under the present Act the application contains the whole thing, and has to be verified. The verification was not necessary under Bills No. I and II, and deposit was allowed in *all cases* where the tenant believed that the landlord would not receive the rent and grant a receipt. But with the limitation of this ground to the only case where the tenant's belief is due to a previous refusal to receive rent or to grant receipt, the provision for verification was introduced.

Application.—This application must be on a Court-fee stamp of the value of 8 annas, if the deposit be of more than Rs. 15. (Sched. II, art. 1, cl. (*b*), para. 3 of Act VII of 1870.) Under section 35 of the Court Fees Act, the Governor-General in Council has declared that the proper fee to be paid upon the deposit, in any Court in the territories under the government of the Lieutenant-Governor of Bengal, of rent not exceeding the sum of fifteen Rupees shall be as follows :—

If the amount deposited does not exceed Rs.						2	8	...	1 anna
„	exceeds Rs.	2	8	but not	„	5	0	...	2 annas
„	„	„	5	0	„	„	10	0	...	4 „
„	„	„	10	0	„	„	15	0	...	6 „

(Notification of the Government of India, No. 1070 of 12th February, 1874. Section 2, sub-section (3), provides that documents referring to repealed Acts should be construed to refer to this Act.)

Accompanied by a fee as the Local Government directs.—The Local Government has directed as follows :—

"*Section* 61 (2).—*For deposits of rent.*—For deposits of rent under section 61 (2), 4 annas for every such deposit of Rs. 25 or less, with an additional 4 annas for every Rs. 25 or part of Rs. 25 in excess : Provided that in no case shall the fee exceed the sum of Rs. 5."

It is not clear how this fee is to be paid, whether in Court-fee stamps or otherwise.

Limitation in case of deposit.—When rent has been deposited under the provisions of this section, a suit for the recovery of an arrear of rent which fell due before the date of deposit should be instituted within six months of the date of the service of the notice of deposit (Sched. III, part I, art. 2, cl. *a*).

In *Sheikh Mahamad Saharulla Choudhuri* v. *Massamat Rumia Bibi* (7 W. R. 487), the plaintiff-zemindar had caused the patni taluk to be sold for arrears of rent due for the year 1224. The defendant-patnidar sued for the reversal of the sale and deposited the rents of the year 1225 under the provisions for deposit of rent. The sale was reversed and the zemindar sued for the rents of the year 1224 within three years of their becoming due, but after six months from the date of deposit by the patnidar of the rents for 1225. *Held*, that the suit was not barred by limitation. It was remarked : "The landlord could not sue for the rents of the year 1224 before the sale (caused by him with a view of realizing those rents) had been reversed. But if such sale were not reversed before the expiration of six months from the date of the deposit for the subsequent year made by

the tenant, the landlord is not to lose his rents, because he did not sue, as under such a state of facts, he had no occasion to sue." The report of the case is meagre. It is likely that the zemindar sued within six months of the sale of the patni taluk being set aside. If he sued within such time, the principle of *lis pendens* applied, and the zemindar had a right of suit for six months from the date of final order of setting aside the sale.

Receipt granted by Court for rent deposited to be a valid acquittance.

62. (1) If it appears to the Court to which an application is made under the last foregoing section that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received—

in cases (*a*) and (*b*) of the last foregoing section, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*c*) of that section, by the co-sharers to whom the rent is due; and

in case (*d*) of that section, by the person entitled to the rent.

This is new.

If it appears.—In the Statement of Objects and Reasons that accompanied Bill No. I, it was stated: "This extension of the right to deposit rent necessitates our conferring on the officer empowered to receive deposits, a certain discretion not allowed by the present law. He is accordingly given by section 104 (62), a discretion to refuse the deposit if he does not think the circumstances of the case warrant its being made." The words used are "if it appears to the Court," and not "if the Court is satisfied," or the like. It would seem, therefore, that an application for deposit may be refused only when the application, on the face of it, does not make out a case. If the application discloses a sufficient case, the Court is not at liberty to enquire into the truth or otherwise of the facts alleged.

Notification of receipt of deposit.

63. (1) The Court receiving the deposit shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof, containing a statement of all material particulars.

(2) If the amount of the deposit is not paid away under the next following section, within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith,—

in cases (*a*) and (*b*) of section 61, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (*c*) of that section, cause a notice of the receipt of the deposit to be posted at the landlord's village-office or in some conspicuous place in the village in which the holding is situate; and

in case (*d*) of that section, cause a like notice to be served, free of charge, on every person who it has reason to believe claims or is entitled to the deposit.

Old Acts.—Sub-section (1) is new. Sub-section (2) replaces section 5, para. 3 of Act VI B. C. of 1862 and section 47, para. 3 of section 47 of Act VIII B. C. of 1869.

Free of charge.—Though in sub-section (2), para. 3, it is not said that the notice should be posted, *free of charge*, at the landlord's village-office, the intention of the Legislature could scarcely be that in case (*c*) of section 61, a fee will be levied for the service of the notice, when such notice is to be served, free of charge, in the other cases. The paragraph should therefore be understood as if the words "free of charge" were in it.

Holding.—The word "holding" in the same paragraph has been used for the word "tenancy," and not in the strict meaning of land held by a *raiyat*.

Who it has reason to believe.—The belief should be based on facts disclosed in the application.

Service of notice.—Under the powers vested in it by sub-section (2) of section 189, *post*, the Local Government has framed the following rule regarding the service of notice under sub-section (2) :—

"*Section* 63 (2).—In cases (*a*), (*b*) and (*d*) of section 61 herein referred to, the notice of the receipt of the deposit shall be served by forwarding the notice by post in a letter registered under Part III of the Indian Post Office Act, 1866, or, where the Court may deem it necessary, in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure."

Payment or refund of deposit.

64. (1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) The payment may, if the Local Government so direct, be made by postal money-order.

(3) If no payment is made under this section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(4) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing sections; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Old Acts.—The first part of sub-section (1) replaces section 5, para. 4 of Act VI B. C. of 1862 and section 47, para. 4 of Act VIII B. C. of 1869. The rest of this section is new.

Application.—An application, under sub-section (1) for the payment of a deposit, is exempt from Court-fee duty if the amount of deposit is Rs. 25 or less, and

if the application is made within three months of the date of deposit (Notification of the Government of India, No. 849 of the 16th February, 1883).

All other applications for payment of deposit under sub-section (1), and all applications for return of deposit under sub-section (3), are subject to a Court-fee duty of eight annas (Sched. II, art. 1, cl. *b*, para. 2 of Act VII of 1870).

Sub-section (2).—No rule has yet been framed by the Local Government requiring the payment of a deposit of rent by postal money-order. It has been considered advisable to try at first the experiment of payment of Government revenue by postal orders.

Arrears of rent.

Liability to sale for arrears in case of permanent tenure, holding at fixed rates or occupancy-holding.

65. Where a tenant is a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, he shall not be liable to ejectment for arears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

This is new.

A permanent tenure-holder, a raiyat at fixed rate and an occupancy-raiyat are all liable to be ejected for breach of a condition carrying forfeiture (secs. 10, 18 and 25). Such a condition, again, is restricted to what is consistent with the provisions of this Act, in case of a permanent tenure-holder, if the contract is made after the 1st of November, 1885 (sec. 10), and in case of the other two classes of tenants, irrespective of the time when the contract was made, before or after the commencement of this Act (secs. 18 and 25). An occupancy-raiyat may further be ejected for misuse of land held by him. These tenants cannot be ejected on any other grounds (secs. 10, 18 and 25).

The result of these provisions and those of this section is that (1) a raiyat at fixed rate or an occupancy-raiyat cannot be ejected for arrears of rent as such, nor for arrears of rent reserved as a ground of ejectment in a contract of tenancy; and (2) a permanent tenure-holder cannot be ejected for arrears of rent as such, nor for arrears of rent reserved as a ground of ejectment in the contract of tenancy, if the contract was made after the 1st of November, 1885; but he may be ejected for arrears of rent reserved as a ground of ejectment in the contract of tenancy, if such contract was made before the 1st of November, 1885.

Alteration in the old law.—This section makes a considerable change in the old law. As to the permanent tenure-holder, the old law was that he could

not be ejected for arrears of rent as such, if by the title-deeds and the custom of the country the tenure was transferable by sale, but the tenure was to be brought to sale (sec. 105 of Act X of 1859, sec. 59 of Act VIII B. C. of 1869). But the tenure-holder could be ejected for arrears of rent, if such a condition was reserved in the lease (*Mohant Balaram Das* v. *Jogendra Nath Mullick*, 19 W. R. 349; *Mumtaz Bibi* v. *Girischandra Chowdhuri*, 22 W. R. 376). But even in such cases the Court granted time to pay up arrears and compensation sometimes on equitable considerations, and at others because section 78 of Act X of 1859 or section 52 of Act VIII B. C. of 1869 was held to apply (*Duli Chand* v. *Mehar Chand*, 12 Beng. 439; *Mathura Mohan Pal* v. *Ramlal Bose*, 4 Cal. 469; *Mahamad Amir* v. *Pryag Nath*, Ind. 7 Cal. 566; *Duli Chand* v. *Rajkisore*, Ind. 9 Cal. 88).

As to the raiyat, irrespective of his class, he was liable under the old law to be ejected for arrears of rent due at the end of the agricultural year (sec. 21 of Act X of 1859, sec. 22 of Act VIII B. C. of 1869). But if his right was a transferable one, section 105 of Act X of 1859 and section 59 of Act VIII B. C. of 1869 were held to be applicable, and he could not be ejected for arrears of rent as such, but his holding was to be brought to sale (*Nandalal Ghosh* v. *Sidi Nazir Ali Khan*, S. D. A. 1860, Vol. II, 382; *Tribhuban Sing.* v. *Jhono Lal*, 18 W. R. 206; *Kristendra Narain Roy* v. *Aena Bewa*, Ind. 8 Cal. 675; *Fakir Chand* v. *Foujdar Misser*, Ind. 10 Cal. 547). Under the present law, raiyati-holdings at fixed rates are declared transferable; such holdings and occupancy-holdings, whether saleable or not by the custom of the place, shall be brought to sale for arrears of rent. The Rent Commission observed: "We have every reason to believe that it (sale for arrears of rent) will be equally successful in the case of occupancy-holdings. Indeed, we are not without previous experience in respect of these also, many landlords, of their own option and as the readiest way of getting their rent, having brought raiyati-holdings to sale in execution of decrees obtained for rent. The largest amount of rent which a landlord can sue to recover is about four years' rent. There are few occupancy-holdings in fairly populated districts which are not worth four years' rent with the costs of getting a decree for it. If the landlord has any doubt on this point, he need not allow more than a single year's rent, or even than a single quarter's rent to fall into arrear without suing for it." (R. C. I. 58.)

And the rent shall be a first charge thereon.—This clause is in accordance with the Full Bench ruling in *Syam Chand Kundu* v. *Braja Nath Pal Chowdhuri*, 21 W. R. 94. This Act provides (secs. 12 to 18) a system of registration of all transfers of, and successions to, permanent tenures and holdings at fixed rates. Where a suit for arrears of rent is brought against the registered tenure-holder or raiyat at fixed rates, the landlord's right to bring the tenancy to sale

and give a good title to the purchaser is absolute. In the case of an occupancy-holding, the landlord has a similar right when he sues the recorded raiyat, if such raiyat continues to be the owner of the holding, or if he has transferred the holding and no notice has been given to the landlord under section 73, *post*. But if such notice is given and the holding is transferable by custom of the place, and the landlord still sues the old tenant, the sale of the holding will not give a good title to the purchaser.

The landlord may but the tenant may not purchase at sale.—When a tenancy is brought to sale in execution of a decree for its own arrears, the landlord may, without permission of the Court, bid for and purchase the tenancy; but the tenant is debarred from bidding for or purchasing it; if the tenant, however, purchases by himself or through another person, the Court may, if it thinks fit, on the application of the landlord or other person interested in the sale, by order set aside the sale and direct a resale (sec. 173).

What passes at the sale.—It is to be noted that what is sold is not the right, title and interest of the judgment-debtor, but the tenure or holding itself is sold, subject, however, in all cases to the "protected interests" within the tenancy (sec. 159). In the case of a permanent tenure or a holding at fixed rate, the tenancy would be at first sold, saving also the "registered and notified incumbrances" (sec. 164); and if the bid is not sufficient, *then only* with powers to annul the "registered and notified incumbrances" (sec. 165). In the case of an occupancy-holding, it will be sold, unless the Local Government otherwise directs for the local area, with power to annul incumbrances of all sorts. Incumbrances may, however, be annulled *only* under the provisions of section 167.

Ejectment for arrears in other cases.

66. (1) When an arrear of rent remains due from a tenant not being a permanent tenure-holder, a raiyat holding at fixed rates or an occupancy-raiyat, at the end of the Bengali year where that year prevails, or at the end of the month of Jyet where the Fasli or Amli year prevails, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

Old Acts.—Sections 21 and 22 of Act X of 1859; sections 22 and 23 of Act VIII B. C. of 1869.

This sub-section applies to (1) non-permanent tenure-holders, (2) non-occupancy-raiyats, and (3) under-raiyats.

An arrear of rent.—This sub-section is general, and not restricted only to money-rents. The landlord may therefore sue for ejectment for arrears of rent in kind remaining due at the end of Chyet or of Jyet, as the case may be (*Krishna Gopal Mawar* v. *Barnes*, Ind. 2 Cal. 374).

At the end.—This sub-section does not apply to arrears of rent that fall due at any time other than at the end of the Bengali year where that year prevails, and at the end of Jyet where the Fasli or Amli year prevails: and a tenant may not be ejected under its provisions for arrears falling due at such other time (*Savi* v. *Chand Shikdar*, Marsh. 348; *Sriram Shikdar* v. *Jagannath Das Mohant*, 5 W. R. X. 45).

Obtained a decree or not.—The landlord may either claim arrears of rent and ejectment in the same suit; or if he has got a decree for arrears of rent, when he did not claim ejectment, may sue only for ejectment and put in the decree for arrears of rent, if unsatisfied, as evidence (*Sheikh Mahamad Hossein* v. *Boodhan Sing*, 7 W. R. 374; *Sheikh Abdul Rahman* v. *Digambari Dasi*, 18 W. R. 477).

Entitled by contract or not.—The liability to ejectment under this sub-section is independent of any contract between the parties, and is an incident of all tenancies that are not expressly excluded.

Waiver.—The receipt of rent for a subsequent year re-affirms the tenancy, and the landlord cannot urge that non-payment of rent due at the end of a previous year has determined the tenancy (*Sheikh Pir Baksh* v. *Mouzah Ali*, 1 Hay, 89). Compare *Kalikristo Tagore* v. *Fazle Ali Choudhuri*, Ind. 9 Cal. 843.

(2) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or, when the Court is closed on the fifteenth day, on the day upon which the Court re-opens.

Old Acts.—Section 78 of Act X of 1859; section 52 of Act VIII B.C. of 1869.

This sub-section is obviously restricted in its application to suits brought under sub-section (1). Where, however, a suit for ejectment is brought for arrears of rent falling due, say, in the middle of the year, and carrying forfeiture under the condition

of a contract, the ejectment is claimed for breach of condition, and section 155 would seem to apply.

Fifteen days from the date of the decree.—The period of fifteen days counts from the date of the final decree in the case, *e.g.*, the decision on review (*Radha Mohan Mandal* v. *Bakshi Begum*, Marsh. 471, 2 Hay, 595); or the decree in special appeal (*Sheikh Abdur Rahman* v. *Digamberi Dasi*, 18 W. R. 477). When, however, there was an illegal order granting a review, and that order was afterwards declared void, no time is extended and the fifteen days are counted from the date of the *only* decree in the case (*Pareshnath Ghosh* v. *Kristalal Dutt*, 23 W.R. 50).

In counting the period of fifteen days of grace, the day on which the decree is passed, should be excluded under clause 2, section 3 of the General Clauses' Act I of 1868, which enacts "for the purpose of excluding the first in a series of days or any other period of time, it shall be sufficient to use the word *from*."

Or when the Court is closed, &c.—This clause is in accordance with the ruling in *Hossein Ali* v. *Donzelle*, Ind. 5 Cal. 906.

Paid into Court.—The words are, "are paid into Court." Hence the amount may be paid by a third party who has interest in protecting the tenancy, *e. g.*, a purchaser from the judgment-debtor (*Sarada Prasad Rai Choudhuri* v. *Nabin Chandra Dutt*, Marsh. 417; or an under-tenant of the judgment-debtor: (see *Inder Prasad Sing* v. *Campbell*, Ind. 7 Cal. 474).

Sufficient payment.—A payment in Court with a protest that a small amount has been improperly charged as interest in a sufficient payment (*Sristidhar De* v. *Durga Narain Nag*, 17 W. R. 462). When the money is brought into Court on the fifteenth day or the next opening day, but it is not received by the Court, because according to some departmental rules the money is to be paid into the Treasury and the tenant uses diligence to comply with such rules and pays the money into the Treasury on a subsequent date, he makes a sufficient compliance with the decree (*Gujadhur Pauree* v. *Naik Pauree*, Ind. 8 Cal. 528).

Subsequent receipt.—A landlord cannot execute the decree for ejectment, when subsequent to the decree he has received the rent from the tenant against whom the decree was passed (*Nobo Kishen Mukerjee* v. *Haris Chandra Banerjee*, 7 W. R. 142).

(3) The Court may for special reasons extend the period of fifteen days mentioned in this section.

This is new.

This sub-section is in accordance with the case-law under the old Acts (*Nobo Kishen Mukherjee* v. *Rameswar Gupta*, 2 Wym. X. 75, 18 W. R. 412, note;

Rao Bani Ram v. *Pran Nath Shah Kayal*, 10 Beng. App. 2, 18 W. R. 412); and the power to extend time is not limited to the Court of the first instance, but an Appellate Court may also extend time. The time may be extended not only at the time of the decree, but also subsequently. In *Sankar Sing* v. *Hari Mohan Thakur*, 22 W. R. 460, where the plaintiff had obtained a conditional decree for ejectment for arrears of rent, it was remarked: "If an application upon sufficient ground had been made to the Court of the first instance for a review of the original judgment, or if it had appeared to the Munsif that the plaintiff was, upon any ground of equity which had arisen between him and the defendant since the passing of the decree, disentitled from claiming the full satisfaction of the decree which had been passed in his favor, then the case might have been otherwise" (*i. e.*, the extension of time to pay up might have been proper). In this case the decree had been sent to another Court for execution, and it was held that such Court had no power to extend the time. The case was decided before the new Civil Procedure Code came into force. From sections 228 and 244 (*c*) of the new Code, it would appear that the Court to which a decree under this section is sent for execution has now the power to extend the time, on a sufficient case being made out.

Interest on arrears.

67. An arrear of rent shall bear simple interest at the rate of twelve per centum per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the institution of the suit.

Old Acts.—Section 20 of Act X of 1859; section 21 of Act VIII B. C. of 1869.

Under the old Acts an arrear of rent was "liable to interest at twelve per centum per annum"; and it was held that the Court might, in its discretion, allow interest or not. The language of the present section is different: an arrear of rent "shall bear simple interest"; and it would appear that it is no longer discretionary with the Court to allow interest or not. The rulings under the old Acts to the effect that the Court had discretion to allow interest or not (*Beckwith* v. *Kristo Jiban Bakshi*, Marsh. 278; *Kasinath Roy Chowdry* v. *Mynaddin Chowdry*, 1 W. R. 154; *Raja Satyanand Ghosal* v. *Zahir Shikdar*, 6 Beng. App. 119; *Maharaja Mahtab Chand* v. *Srimati Deo Kumari Debi*, 7 Beng. App. 26; *Radhika Prasanna Chandra* v. *Arjun Majhi*, 20 W. R. 128, and others) would thus appear to have been set aside.

This section must be read with section 178, sub-section (3), clause (*b*), which provides that nothing in any contract between the landlord and the tenant made after the passing of this Act, shall affect the provisions of this section relating to interest on arrears of rent. The result is that, unless there is a contract dated

prior to the 14th of March, 1885, interest runs on arrears at 12 per cent. from the end of each quarter of the agricultural year. Contracts, dated prior to the 14th of March, 1885, and reserving a higher rent than 12 per cent. or a compound interest or interest falling due earlier than the end of the quarter, remain valid and enforceable.

An interest at 12 per cent. from the expiration of each quarter means, where rent is payable in four equal quarterly instalments, an interest of—

1½	per cent. on	arrears for	6	months;
3	"	"	9	"
4½	"	"	1	year.
6	"	"	15	months;
7½	"	"	18	"
9	"	"	21	"
10½	"	"	2	years;
12	"	"	27	months;
13½	"	"	30	"
15	"	"	33	"
16½	"	"	3	years;
18	"	"	39	months;
19½	"	"	42	"
21	"	"	45	"
22½	"	"	4	years.

Rulings under the old Acts.—The mere non-enforcement by a landlord, even for a series of years, of his right to interest upon arrears of rent, does not amount to a waiver of such right (*Jahari Lal* v. *Ballav Lal*, Ind. 5 Cal. 102). Where rent is withheld, the defaulter is liable to pay interest whether provided for or not in the pottah (*Lala Sheo Sahay* v. *Kamarinnissa*, 2 W. R. X. 68; *Mayer* v. *Bibi Sowlutonissa*, Ibid, 96).

Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

68. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

Provided that interest shall not be decreed when damages are awarded under this section.

Old Acts.—Section 2 of Act VI B. C. of 1862 and section 44 of Act VIII B. C. of 1869.

Reasonable or probable cause.—The damages imposed by this sub-section are highly penal when the arrears are for a short period. It was seen under the last section that even when the arrears are for four years—and that is the longest period for which rent may be in arrears without being barred by the law of limitation—the legal interest comes up to only 22½ per cent. of the amount of arrears. A man is not liable to damages, merely because he may, from poverty, illness, or some unavoidable cause, have failed to pay his rent (*Haro Mohan* v. *Umesh Chandra Dutt*, 1 R. J. P. J. 117). "Before awarding these damages, the Court, in exercise of its discretion, must look to the condition of the parties, and the particular hardship inflicted on the landlord by the omission of the under-tenant to pay his rents before it will call into action the penal terms above-mentioned" (*Babu Ram Bodhan Sing* v. *Rani Sri Kunwar*, W. R. Sp. X. 22).

The Court may award.—It is at the discretion of the Court to award damages or not (*Babu Ram Bodhan Sing* v. *Rani Sri Kunwar*, W. R. Sp. X. 22; *Maharaja Mahtab Chand Bahadur* v. *Devendra Nath Tagore*, Ibid, 68; *Gopal Lal Tagore* v. *Mahamad Kadir*, Ibid, 73; *Zamiraddinnissa Khanum* v. *Phillippe*, 1 W. R. 290).

Proviso.—The proviso is in accordance with the ruling in *Naba Kant De* v. *Raja Barada Kant Roy*, 1 W. R. 100, where it was held that damages were given in lieu of interest and could not be granted where interest had been decreed.

It would appear that, where damages are not claimed but a high stipulated interest, the Court is not at liberty to award damages and reject the claim for interest. Under the old law it was held that damages could be awarded only when specially claimed, and the absence of probable cause expressly alleged in the plaint *Hara Mohan* v. *Umesh Chandra Dutt*, 1 R. J. P. J. 116).

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as it thinks fit.

Old Acts.—Section 3 of Act VI B. C. of 1862; section 15 of Act VIII B. C. of 1869.

The difference in the wordings of this sub-section and of sub-section (1) should be noted. The landlord is entitled to damages on the amount decreed; the raiyat, on the *whole* amount claimed. It seems to be an open question whether any damages can be awarded to the tenant under this sub-section, unless the whole claim is dismissed. Suppose, A sues B for rent for three years and one-quarter. It is proved that rent is due for three years and the claim for one-quarter more is due to a *bonâ fide* mistake. A is, under sub-section (1), entitled to damages not exceeding 25 per cent. of the three years' rent if he can show that B wihheld rent without reasonable cause. Suppose, in the same case, B satisfies the Court that the arrears are due for only one and the last quarter, and that he has paid rent for the other three years personally to A, and under circumstances that it is clear that A's claim for those three years is without any reasonable cause. Is B entitled to any damages? Equitably he ought to get damages, though it is not clear from this sub-section that he is entitled to get them.

The Court must find from the evidence in the case that the suit is without probable or reasonable cause, before it can award damages to the tenant under this sub-section (*Ram Chandra Sarma Choudhuri* v. *Dagoo Khan*, 10 W. R. 339). An Apellate Court has a right to award damages under this sub-section, as much as a Court of the first instance (*Ibid*).

Produce-rents.

The provisions contained in this sub-chapter, for the division of a crop by a public officer in cases where the rent is paid in kind, or is the value of a certain share of the gross produce, and a dispute arises between the parties, are based on the proposals made for Behar by the Behar Committee and the Rent Law Commission. But they have been made generally applicable to all places where the Act is prevalent.

The Behar Rent Committee reported: "In the papers referred for our consideration, the evils of the *bhaoli* system in South Behar are described as follows:—'The next engine of oppression in the hands of the zemindar is not to make the *danabandi* (appraisement of crops) at all, but to let the grain rot in the threshing-floor or in the field. When the ryots decline to accept the zemindar's terms as to the share of the produce, the zemindar declines to make the appraisement. One year's loss of rent is nothing to him (the zemindar), but to the ryot the loss of one year's crop means starvation. The grain is allowed to rot in the fields, or is eaten up by birds, unless the ryots come round in time. * * * Another mode of oppression is that after the *danabandi* or *agorabatai* (appraisement

or apportionment of the crops) has been made, the zemindars do not allow the ryots to take away their grain.' It will be seen from the above description that the zemindars of South Behar practically take, by way of rent, as much of the crop as they choose to claim. The existing law makes no special provision for the realization of rents in kind. It therefore intended that rents in kind should be realized by regular suit or by distraint, in the same way as where rent is payable in cash. The practice, however, is for the zemindar to prohibit the cutting or removal of the crop till the tenant agrees to his appraisement or division of the produce, as the case may be." (R. C. II. 255.)

The provisions of this sub-chapter are intended to remedy the abuses thus pointed out. It is supposed that the knowledge that there is an authority to which reference can be made in case of dispute, will tend largely to discourage unfair dealings between the landlord and the raiyat, and to check frivolous disputes.

Order for appraising or dividing produce.

69. (1) Where rent is taken by appraisement or division of the produce,—

(*a*) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or

(*b*) if there is a dispute about the quantity, value or division of the produce,

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application, make the like order in any case where in the opinion of the District or Sub-divisional Magistrate the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected.

This is new.

Appraisement or division.—These two words refer to the two classes

of *bhaoli* holdings, the *danabandi* and the *agore batai*. When the holding is *danabandi*, the corps are estimated just before they come to maturity by the *gomasta* or *amin*, assisted by the village accountant, *patwari*, and the bailiff (*barahil*). A memorandum of the estimate, called a *danabandi*, is made by the *patwari*. The raiyat is then at liberty to cut and store the grain; and he pays the landlord's share either in grain or money, as may be agreed upon. In theory, *danabandi* or *agore batai*, if fairly made, is the best and most equitable mode of realizing rent, but in practice, the raiyat is said to suffer from the corruptness of the landlord's agents, who either over-estimate the probable outturn or else demand heavy bribes for making a fair estimate. Supposing the real outturn to be sixteen maunds, the estimate will make it eighteen. The landlord will then get nine maunds as his half, and another maund in addition on some pretext or other. The raiyat will thus be left with six maunds; but out of this he will have to fee the *gomasta*, the *patwari*, the *barahil*, &c., with a fixed percentage of his share, till, finally, he may think himself fortunate if he carries off five of the sixteen maunds as his own half of the produce.

When the holding is *agore batai* (*lit.*, watch and divide), the division takes place after the crop has been cut and stored. Either the landlord's men cut and gather the crop, or the raiyat does so under the superintendence of such men. It is said that under this system, though the raiyat has to give the usual fees (abwabs) to the landlord and his agents, still he generally gets a larger share of the produce than under the *danabandi* system.

Collector.—"Under the authority vested in him by Chapter I, section 3 (16) of the Bengal Tenancy Act VIII of 1885, the Lieutenant-Governor is pleased to invest all Officers in charge of sub-divisions with the powers of a Collector for the purpose of discharging the functions referred to in sections 69 to 71 of the Bengal Tenancy Act." (Notification of the Government of Bengal of the 21st April, 1886.)

Sub-section (1).—This sub-section has been taken from section 43 (*a*) of the North-Western Provinces Rent Act XVIII of 1873 (replaced by Act XII of 1881). But there is this difference (1) that the North-Western Act requires no deposit of the costs in advance as is required by this section, and (2) that under that Act the Collector only decides the dispute about the quantity and the value of the produce, and *not* the dispute about the division of the crop. "Dispute about the division of the produce" would appear to include dispute about the share of the produce claimed by either party.

Application of sub-sections (1) and (2).—These sub-sections apply only to cases where, owing to the absence of either party, a division or appraisement of the crop cannot be made, or where there is a dispute regarding such division or

such appraisement (regarding the quantity of the produce or its value). The officer appointed is required only to appraise or divide the crop. He has no right to decide any question of title to the land or its rent. Where there is a dispute as to such title, the proper course is by a regular suit and not by an application under sub-section (1). When the application is made to the Collector, if it appears to him that a dispute regarding title exists, he may, in his discretion, reject the application. If he allows the application, the appraisement and division shall be made by the officer appointed, and then the Collector shall proceed under sub-section (5) of the next section. Where a District or a Sub-divisional Magistrate considers that a breach of the peace is likely to happen and that on account, *not* of a dispute as to the division or appraisement of the crop due to an admitted landlord or tenant, but of a dispute about the title to the land, he should proceed under Chapter XII of the Criminal Procedure Code X of 1882, and not move the Collector under sub-section (2).

Payment of costs incurred.—Sub-section (1) provides only for the *deposit* of costs by the applicant. Under the North-Western Act the Collector determines the share of the costs to be paid by either party (sec. 43, sub-sec. *e*). Under the Oudh Act, costs are deposited by the applicant, but afterwards allotted at the time of making the award (sec. 18). The Rent Commission proposed that the costs should be paid by the party who, the Collector found, was in the wrong (C. B. sec. 84, sub-sec. *b*). Bill No. I provided that the costs should be paid by the landlord or by the raiyat, or partly by the one, or partly by the other, as the Collector might, in each case, direct (sec. 116). This last section has been omitted, and the Collector's power to allot costs both when an application is made under sub-section (1) or when he proceeds under sub-section (2) in order to prevent a breach of the peace, is included within the general powers vested in him by sub-section (4) of the next section.

Appointment of officer to appraise and divide.—It is to be hoped that the officer appointed under this section may not be below the rank of a Sub-Deputy Collector. The suspicion against *thika amins* and police officers is too widely prevalent to give satisfaction if any of them be appointed.

Suit for rent in kind.—In a suit for rent in kind or the value of the produce due to plaintiff, the damage to the plaintiff is equal to the value of the crop at the time, when it was the duty of the defendant to have handed it over to the plaintiff. If after that time the prices fall, the defendant has no right to inflict on the plaintiff a loss by giving him anything less than what he would have received if the defendant had paid the bhaoli rent in due time (*Lachman Prasad* v. *Hoolas Mahtoon*, 11 W. R. 151; *Kristabandhu Bhattacharjee* v. *Rotish Sheikh*, 25

W. R. 307). A landlord, who refuses to accept rent in kind at the proper time when offered to him, cannot subsequently sue for the money-value simply because he did not choose to accept the rent in kind when offered (*Mohant Narayan Gir* v. *Gour Saran Das*, 23 W. R. 368). A *khasra danabandi* is no very cogent evidence, and would not of itself prove as against the defendant that the relation of landlord and tenant did actually exist; but, as it is generally made in the presence of all the tenants and occupiers, it raises a presumption that such relation existed (*Hari Narayan Sing* v. *Beljit Jha*, 24 W. R. 125).

Procedure where officer appointed.

70. (1) When a Collector appoints an officer under the last foregoing section, the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made; but if either the landlord or the tenant fails to attend either personally or by agent, he may proceed *ex parte*.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and, after giving the parties an opportunity of being heard and making such enquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Civil Court, but, subject as aforesaid, his order shall be final and shall, on application to a Civil Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the officer makes an appraisement, the appraisement papers shall be filed in the Collector's office.

This is new.

Sub-section (5).—Bill No. I provided that when either party received less than the share to which he was entitled, he could within three months institute a suit against the other party to recover the value of the additional portion of the crop due to him (sec. 114). The Select Committee omitted that provision, and remarked: "We have empowered the Collector, in all cases, to pass such order as he thinks just on the report of the officer deputed, and have provided that his order shall be final and be enforceable as a decree, unless he thinks fit to refer any question in dispute between the parties for the decision of a Civil Court. This seems to us simpler and more convenient procedure, than leaving the parties to seek redress in the Civil Court, *in the first instance*, as under the original Bill."

The Collector may refer any question, &c.—The reference, if any, by the Collector being after the crops have been cut, gathered and stored, delay will not cause any substantial injury to the parties.

As a general rule, the Collector should not go into a question of title to the land if raised by the parties, but it can be easily imagined that where the parties are at open feuds with each other, one may deny the other's title with a view to oust the Collector of his jurisdiction, and make the provisions of section 69 nugatory. It is submitted, that the words "may refer *any question* in dispute between the parties" are wide enough to include questions of title; and the Collector may, in exercise of his discretion, refer such questions for decision to the Civil Court and make a conditional order subject to such decision, or he may, in clear cases, summarily dispose of the question and pass final order in the matter.

Sub-section (5). The Collector's order shall be final.—This means that the Collector's order regarding the appraisement and division of that particular crop shall be final. If the Collector decides a question of the share of the crop to which the landlord or the raiyat is entitled, his decision will not be a *res judicata* between the parties; and the other party, if aggrieved, may bring a regular suit to have the share settled. (See *Bholabhai* v. *Adesang*, Ind. 9 Bom. 75.) If, again, the Collector incidentally decides a question of title to the land, the party aggrieved may not only bring a regular suit to establish his right to the rent of the land, but may claim to recover the value of his share of the crop that was appraised, or divided and given to the wrong person.

Rights and liabilities as to possession of crop.

71. (1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing-floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry, without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time or in such a manner as to prevent the due appraisement or division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

This is new.

Under the old law there was no express provision as to the right of possession of the bhaoli crop, and though it was generally understood that the right of possession was with the raiyat, yet where the landlord was strong, the raiyat, for fear, used to leave the crop to rot in the field, rather than cut or remove it against the landlord's order.

This section deals comprehensively with and finally settles the question of possession. Section 186, sub-section (1), clause (*c*), has to be read along with this section. It is there provided that if any person, otherwise than in accordance with this Act or some other enactment for the time being in force, except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing, or otherwise dealing with any produce of a holding, he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code. While, thus, this section efficiently protects the raiyat from the interference with his crop by the landlord or his men, it, at the same time, protects the just rights of the landlord by providing that if the raiyat removes the produce or any part of it in a manner and at a time as to prevent its due appraisement or division, there will be a *conclusive* presumption against him that the land yielded the fullest crop (sub-sec. 4).

Liability for rent on change of landlord or after transfer of tenure or holding.

Tenant not liable to transferee of landlord's interest for rent paid to the former landlord, without notice of the transfer.

72. (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the tenant.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

This is new.

Sub-section (1).—This sub-section is in accordance with the case-law on the point. Until the tenant has a clear and distinct notice, either actual or symbolical, of the transfer of the old landlord's rights, such transfer cannot be said to bind the tenant, and he is justified in paying rent to the old landlord (*Thakurdas Gosvami* v. *Pitambar Ray*, S. D. A., 1859, 820). But if the tenant, after having notice of the transfer, chooses to pay his rent to the former landlord, he does so at his risk and cannot plead such payment in answer to a suit for rent by the new landlord (*The Collector of Rajshahye* v. *Hara Sundari Debi*, W. R. Sp. X. 6).

When the landlord's interest is transferred.—These words mean the transfer of the landlord's right to receive rent from his tenants. Notice is, thus, necessary not only in cases of sale, gift or the like, but also in all cases, *e. g.*, of an usufructuary mortgage or a grant of an intermediate tenure, where the right to receive the rents is transferred to another. A tenant, paying rent to the superior landlord, after the grant of an intermediate lease but without notice of it, is not liable again to the intermediate lessee in respect of the same rent (*Sheikh Attapyi Moula* v. *Sheikh Sakwat Ali*, Marsh. 102; *Nilmani Ray* v. *Hills*, 4 W. R. X. 38).

Sub-section (2).—The following mode of serving the general notice under sub-section (2), has been prescribed by the Local Government :—

"*Section* 72 (2).—The general notice referred to in this sub-section may be published by the transferee by fixing up a written notice to the tenants in the

village-office, or in the presence of not less than two persons on some conspicuous place on the lands, and by proclaiming to the tenants by beat of drum in every village to which the transfer extends, that the interest of the former landlord has passed to the transferee. The transferee may, if he thinks fit, apply for service of the notice to the Civil Court having jurisdiction to entertain a suit for arrears of rent of the holding, and the Court shall thereupon serve the notice as hereinbefore prescribed on payment of the process-fee prescribed by the High Court."

General notice.—This sub-section (2) only says that a general notice published in a certain manner shall be sufficient. It does not say that any other mode of publishing a general notice will *not* be sufficient. Hence, if an auction purchaser in execution proceedings takes possession under section 319 of the Civil Procedure Code, and his purchase is proclaimed to the tenants by beat of drum, that will be a sufficient notice; or, if he chooses, he may serve each of the tenants with a written notice of his purchase. Similarly, purchasers of estates for arrears of revenue may proceed under section 29 of Act XI of 1859, and purchasers of patni taluks, for arrears of rent, under section 15, sub-section 2, of Regulation VIII of 1819. All that is necessary is, that the tenants get actual notice of the purchase. In voluntary transfers, it will be convenient for the transferees to apply under this sub-section (sub-sec. 2).

Time from which the title of the transferee dates.—Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof: such incidents include the rents accruing after the transfer (sec. 8 of the Transfer of Property Act IV of 1882). In the absence of a contract or local usage rents are deemed, as between the transferor and the transferee, to accrue due from day to day and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof (sec. 36 of Act IV of 1882). In a sale in execution of a decree, the transfer has now been expressly declared to date from the confirmation of the sale (sec. 316 of the Civil Procedure Code, XIV of 1882). This set at rest the conflict of opinion that existed before the amended Code came into operation, and set aside the Full Bench ruling in *Bhairab Chandra Bandopadhyaya* v. *Soudamini Debi*, Ind. 2 Cal. 141, and earlier decisions to the same effect. The late case of *Ramessar Nath Sing* v. *Mewar Jogajit Sing*, Ind. 11 Cal. 341, which followed the Full Bench ruling, is also a case under the law as it stood before the amended Code came into operation. In a sale for arrears of revenue, the transfer dates from the time when the sale becomes final and conclusive (sec. 28 of Act XI of 1859).

Application of this section.—This section applies to the case of a trans-

fer of the whole interest of the landlord to another person. It has no application to the case of a transfer of a share of such interest. In fact, this Act has not in any place provided for the separate rights of joint landlords, and it would appear that joint landlords, may not exercise any rights as landlord, except by acting together or by a common agent or common manager (*see* sec. 188, and notes thereunder).

Liability for rent after transfer of occupancy-holding.

73. When an occupancy-raiyat transfers his holding without the consent of the landlord, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner.

This is new.

Sections 12 to 15 provide for notice of a transfer of a permanent tenure; and section 18 makes those provisions applicable to the case of a raiyat at fixed rates. Of the remaining classes of tenants, this section provides for notice when an occupancy-holding is transferred. There is no provision in this Act requiring notice in the case of a transfer of a non-permanent tenure, a non-occupancy-holding or an under-holding. A notice of transfer would be equally necessary upon general principles in the case of a transfer of any such tenancy. And till such notice is given, the liability of the old tenant would continue.

This section applies to the case of a transfer of an occupancy-holding, when such holding is transferable by local usage. When it is not so transferable, the service of notice cannot validate what is otherwise invalid.

Further, a notice under this section does not bind the landlord when a share of an occupancy-holding is transferred without his consent. (*See* sec. 88.)

As to the effect of an invalid transfer of an occupancy-holding, *see* the notes at pp. 91-2, *ante*.

The Local Government has framed the following rules regarding the notice of the transfer to be given to the landlord under this section :—

"*Section* 73.—Notice under this section shall be in writing, and shall be delivered to the landlord or his agent, or, where two or more persons are joint landlords, to their common agent referred to in section 188, or to their common manager appointed under section 95, as the case may be, at the landlord's village-office, or at such other convenient place as may be appointed by the landlord for the payment of rent under sub-section (2) of section 54.

"The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court having jurisdiction to entertain a suit for arrears of rent of the holding in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court."

Illegal cesses, &c.

Abwab, &c., illegal.

74. All impositions upon tenants under the denomination of *abwab*, *mahtut*, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

Old Acts.—Sections 54 and 55 of Regulation VIII of 1793; section 3 of Regulation V of 1812; section 9, clause (1) of Regulation VII of 1812; section 10 of Act X of 1859; section 11 of Act VIII B. C. of 1869.

An amendment was proposed in Council by the Hon'ble Babu P. M. Mukerji, to add the following exception to this section :—

"*Exception.*—Bonus or salami paid to the landlord by the raiyat in consideration of the former allowing the latter to do an act which he is not lawfully entitled to do, shall not be deemed an imposition within the meaning of this section."

He said :—"The principle of this amendment, if I recollect right, was not objected to by the Select Committee when the question was discussed. Considering the very heavy penalties which the section imposes for the collection of any sum over and above the actual rent, it is, I think, necessary that an *exception* of this kind should be expressly inserted in the Bill for the purpose of giving protection to the landlord in those cases in which he receives a bonus or salami from the raiyat for allowing him to do what he otherwise would have no lawful power to do; as, for instance, when the landlord allows the raiyat to make an excavation and take earth for making bricks. In such cases the salami which the zemindar gets from the raiyat should be exempted from the operation of this section."

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik said :—"The Government does get such fees in estates which are not permanently settled in the Bombay Presidency. Perhaps the hon'ble member in charge might reconsider the matter."

The Hon'ble Sir Steuart Bayley said :—"We have considered the matter. We think there is no objection to the principle which the amendment lays down, but we are very much afraid of its practical operation. The substantive law has

been kept as it is, and the old rulings will be applicable to it. Whatever is not illegal now, will not be illegal under this Bill; what is illegal now will continue to be illegal still. We have not ventured to touch the section, and for this reason I think it would be unwise to put in the proposed *exception*."

The amendment was put and negatived.

Rulings under the repealed Acts.—The following have been held to be illegal cesses :—(1) zabita batta (*Radhika Mohan Sarma Chowdry* v. *Gangaprasad Chakravarti*, 7 Sel. Rep. 142, o. c., 166, n. e.); (2) chanda or subscription (*Thomas Meliss* v. *Meghnath Thakur*, S. D. A. 1852, 4); (3) nájái or distribution of rent of raiyats who have left (*Dhali Paramanik* v. *Ananda Chandra Talapatra*, 5 W. R. X. 86); (4) a cess of so much *goor* per maund manufactured, over and above the regular money-rent (*Sonam Sukul* v. *Shèikh Elahi Baksh*, 7 W. R. 453); (5) a tax on cattle, ostensibly for grazing (*Bhagirath Shukdar* v. *Ram Narain Mundur*, 9 W. R. 300); (6) parabi or festival cess (*Kamala Kant Ghosh* v. *Kalu Mahamad Mandal*, 3 Beng. A. C. 44, 11 W. R. 395); (7) patwaris' wages and allowances (*Barma Choudhuri* v. *Srinanda Sing*, 12 W. R. 29; *Mengur Mundur* v. *Babu Hari Mohan Thakur*, 23 W. R. 447); (8) bhikha or present to the zemindar on the *annaprasana* (first eating of rice) of his son (*Nabin Chandra Roy Choudhuri* v *Guru Gobind Sarma Majumdar*, 14 W. R. 447); and (9) dasturi, sonari, batta mal, batta company and dâk cess on money-rents, and neg (landlord's due of one seer and a quarter per maund), pansera (or harvest-fee of five seers), bodhwara (watchman's wages), pohwi (priest's wages), nocha (divided among patwari, gomasta, amin, pales and navisinda), sidha (palwan's due) and mangan on rent in kind (*Chultan Mahtoon* v. *Tilukdhari Sing*, Ind. 11. Cal. 175, F. B.). An abwab cannot be recovered even if there be a clear contract between the parties for the payment (*Ibid*). The Full Bench decision has set aside the rulings in—

(1) *Jeeatulla Paramanik* v. *Jagadindra Narain Roy*, 22 W. R. 12, in so far as it was there held that if the zemindar demanded a cess over and above the original rent and the raiyat consented or contracted to pay it, then this demand and the old rent formed a new rent lawfully claimable under the contract; (a)

(2) *Jagadish Chandra Biswas* v. *Tarikulla Sarkar*, 24 W. R. 90, where it was held that *parabi* might be recovered if expressly reserved in the contract, it being a part of the consideration for which the agreement was entered into; and

(a) The report of this case is meagre; but a reference to the record shows that the claim included over and above the original rent (asal jama), a demand of pattai kharach, at three annas six pies per rupee; of jala batta, at three pies per rupee, and ijaradari, at three annas seven pies per rupee.

(3) *Mahamad Faez Choudhuri* v. *Jamu Gazi*, Ind. 8 Cal. 730, where it was held that a condition in the lease that the tenant would pay to the landlord collection charges, could be enforced, if the condition was definite and certain in its nature and formed part of the consideration of the lease.

In the Full Bench case, Mitter, J. (Tottenham and Pigott, JJ., concurring), remarked: "It has been contended before us on behalf of the plaintiffs that the liability relating to the payment of these *abwabs* flows from the incidents of the contract under which the lands were let to the defendant and his ancestors, such incidents, though not expressly mentioned in the contract, being still deducible from the usage or custom established on the evidence. I am of opinion that this contention, so far as it goes, is sound; but the question is whether, having regard to the laws in force relating to *abwabs*, such a contract is enforceable. The solution of this question depends upon another question, namely, whether the imposition of such *abwabs* as these is prohibited and made unlawful by any law in force in this country? If the affirmative be the correct answer of this latter question, it does not admit of any doubt that the plaintiffs are not entitled to enforce the contract and to recover the disputed items; because 'every contract made for or about any matter or thing which is prohibited and made unlawful by statute, is a void contract.' (Section 23, Indian Contract Act.) Section 54, Regulation VIII of 1793, says: 'The imposition upon the ryots under the denomination of *abwab*, *mahtut*, and other appellations, from their number and uncertainty having become intricate to adjust and a source of oppression to the ryots, all proprietors of land and dependent talukdars shall revise the same in concert with the ryots, and consolidate the whole with the *assul* into one specific sum.' The next section provides a penalty for the infraction of the aforesaid provision. Section 61 of the same Regulation has laid down that, 'in the event of any claims being preferred by proprietors of estates or dependent talukdars, farmers or ryots on engagements wherein the consolidation of *assul*, *abwab*, &c., shall appear not to have been made, they are to be non-suited with costs.' Section 3 of Regulation V of 1812 provides as follows: 'Such part of Regulation VIII of 1793 and of Regulation IV of 1794 as require that the proprietors of land shall prepare forms of pottahs, and that such forms shall be revised by the Collectors, and which declare that engagements for rent contracted in any other mode than that prescribed by the Regulations in question shall be deemed to be invalid, are likewise hereby rescinded, and the proprietors of land shall henceforward be considered competent to grant leases to their dependent talukdars, under-farmers, and ryots, and to receive correspondent engagements for the payment of rent from each of these classes or any other classes of tenants according to such form as the contracting parties may deem most convenient and most conducive to their respective

interests, provided, however, that nothing herein contained shall be construed to sanction or legalize the imposition of arbitrary or indefinite cesses whether under the denomination of *abwab*, *mahtut*, or any other denomination. All stipulations or reservations of that nature shall be adjudged by the Courts of Judicature to be null and void; but the Court shall notwithstanding maintain and give effect to the definite clauses of the engagements between the parties, or, in other words, enforce payment of such sum as may have been specifically agreed upon between them.' Section 10 of Act X of 1859, and section 11 of Bengal Act VIII of 1869, declared the exaction of any sum in excess of the rent specified in the pottah of an under-tenant or a raiyat, or payable under the provisions of the aforesaid Acts as *abwabs*, &c., to be illegal. Under the provisions of the Regulations and Acts cited above, it seems to me that a contract for the payment of *abwabs* is unlawful, and is not enforceable by law. It has been contended before us that a claim for the recovery of the *abwabs* existing before the Permanent Settlement is enforceable notwithstanding these provisions, because section 54 of Regulation VIII of 1793 contained only a direction for the consolidation of the *abwabs* with the *assul jumma*, but no penalty was attached to an omission on the part of the landholders to act according to that direction. But it seems to me that this contention is not correct, because section 61 of the said Regulation, in my opinion, provided the penalty in question, that penalty being the non-suiting of the claim for the recovery of the *abwabs*. Even supposing that this contention is valid, still the plaintiffs cannot succeed in this case. There being this plain direction in the Regulation, if it was not complied with, it is for the landlord to prove that these *abwabs* existed at the time of the Permanent Settlement. The plaintiffs in this case have not established this fact. It has been *next* contended that, although the disputed items in the plaintiffs' claim are described in the plaint, as 'old usual *abwabs*,' and in the zemindari accounts also they are designated as *abwabs*, separate and distinct from the specified rent, yet they are not *abwabs* but part of the rent. This contention is mainly based upon the ground that any thing which is certain and definite does not come under the class of *abwabs*, the imposition of which is prohibited by the Regulations. Although the Regulations did not clearly define what an *abwab* is, still I think that it cannot be maintained that any thing which is definite and certain is not an *abwab* under the Regulations, although the parties to the contract may call it so. It seems to me that the Regulations, without defining accurately what an *abwab* is, left this question for the determination by the Court in each case upon the evidence. I cannot find anywhere in the Regulation the precise definition of the word *abwab* which would justify me to treat the disputed items of claim as part of the specified rent, although the plaintiffs claim them in the plaint and entered them in the zemindari accounts as '*abwabs*.'

It has been *further* said that, as there is a contract between the parties for the payment of these dues, under the latter portion of section 3, Regulation V of 1812, the plaintiffs are entitled to recover them. But the language of that section does not, in my opinion, support this contention; on the other hand, it provides 'that nothing therein contained shall be construed to sanction or legalize the imposition of arbitrary or indefinite cesses whether under the denomination of *abwab*, *mahtut* or any other denomination.' The last four lines of the section in question provide that the engagement for the payment of any sum as may have been specifically agreed upon between the parties shall be enforced. This provision, it seems to me, refers only to the amount which is by the contract fixed as the rent payable to the landlord. The section in question provides mainly, that the proprietors of the land shall thenceforth be competent to grant leases to ryots, &c., and to receive corresponding engagements *for the payment of rent from them.* Having regard to the words of the section in question italicized, I think the words 'sum specified' refer to the amount of the rent specified. I do not think it necessary to notice in detail the decided cases on this point. There is a clear conflict in these decisions, some of them supporting the view which I take. Those in which a contrary view has been taken, have been decided either upon the ground that the *abwabs* claimed in them, not being indefinite or uncertain, did not come within the class of *abwabs*, prohibited by the regulations, or, upon the ground that there were clear contracts between the parties for the payment. The last-mentioned ground is evidently based upon the construction of section 3, Regulation V of 1812, for which the learned Counsel for the plaintiffs contended. For the reasons given above, I am unable to adopt this construction. The view which I take of the section in question is supported by the decision of Sudder Dewanny Adawlut, in *Radha Mohun Serma Chowdry* v. *Gunga Pershad Chackerbuttee.* As regards the other ground, *viz.*, that any thing which is not uncertain or indefinite, is not an *abwab* within the meaning of the Regulations, I have already dealt with it."

Landlords should take note of this Full Bench ruling, or they may find themselves liable to penal damages under the next section.

In *Bodhan Orawan Mahtoon* v. *Jemadar Baboo Jogesvar Dayal Sing*, 24 W. R. 4, delivery of goods, fixed and uniform, and made from year to year since the creation of the tenancy was regarded as rent in kind and not as cess. Similarly in *Serajgunge Jute Company, Limited* v. *Torabdi Akand*, 25 W. R. 252, where a *talab beshi* of 2 annas in the rupee was consolidated with the asal jama and the total was entered as one sum in the jamabandi, and also in the raiyats' receipts which they refused to file, it was held that the whole was recoverable. This was in its nature an enhanced rent and not an addition of a cess.

Payment for a long number of years of cesses which are illegal, does not validate them (Ind. 11 Cal. 175). A tenant, adjudged by an *ex parte* decree to pay a particular cess, or who has paid it for three year, is therefore not liable to pay it for ever (*Arjun Sahu* v. *Ananda Sing*, 10 W. R. 257 ; *Dhali Paramanik* v. *Ananda Chandra Talapatra*, 5 W. R. X. 86).

Abwabs cannot be recovered even from intermediate tenure-holders who have contracted to pay them, and who have themselves collected them from the under-tenants (*Radhika Mohan Sarma Chowdry* v. *Ganga Prasad Chakravarti*, 7 Sel. Rep. 142, o. e., 166, n. c. ; *Thomas Meliss* v. *Meghnath Thakur*, S. D. A. 1852, 4 ; *Kamala Kant Ghose* v. *Kalu Mahamad Mandal*, 3 Beng. A. C. 44, 11 W. R. 395). Illegal cesses cannot be recovered, even from the tehsildar who has collected them for the landlord (*Nobin Chandra Roy Choudhuri* v. *Guru Gobind Majumdar*, 25 W. R. 8). But if the money was voluntarily paid by the tenants, the tehsildar is bound to account to the landlord for payment made to him by the tenants (*Ibid*).

Kanta-gara, or a charge imposed upon boatmen for driving stanchions or pegs into the river bank for the purpose of attaching their boats thereto, is not an illegal cess (*Dhanput Sing* v. *Dinabandhu Shaha*, 9 Cal. 279).

Penalty for exaction by landlord from tenant of sum in excess of the rent payable.

75. Every tenant from whom, except under any special enactment for the time being in force, any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount or value of what is so exacted exceeds two hundred rupees, not exceeding double that amount or value.

Old Acts.—Section 51, clause 2, and section 55 of Regulation VIII of 1793 ; section 10 of Act X of 1859 ; section 11 of Act VIII B. C. of 1869.

Under the old law the tenant was entitled only to damages not exceeding double the amount of exaction. The provision to that effect was almost useless when in case of a large number of raiyats, a comparatively small sum was exacted from each of them. "It seemed a mockery to tell the raiyat from whom a sum of Rs. 2 had been exacted that he might sue his landlord with the prospect, if success-

ful, of recovering double the amount." A case was mentioned in Council, where road and public work cesses at 1 anna each per rupee were levied from the raiyat, when only 3 pies each was the legal rate. It is notorious that in many places the landlord recovers from the raiyats not only cesses payable by them and him jointly, but much more than that. As a matter of public policy to put a check upon these exactions, provisions have been made for penal damages to the amount of Rs. 200. In Bill No. I the penalty was Rs. 500, which was reduced to the present amount by the Select Committee.

Except under any enactment.—These enactments are the Cess Act IX B. C. of 1880, the Embankment Act II B. C. of 1882, the Survey Act V B. C. of 1875, the Irrigation Act III B. C. of 1876, and the Drainage Act VI B. C. of 1880. (*See* secs. 47, 74, 38, 83 and 44, respectively.)

Exacted.—This word as used in this section does not necessarily imply the use or show of force or threat. If force or threat is used, that would constitute a criminal offence, punishable under the Indian Penal Code. In *Ramprasad Bhagat* v. *Ramtahal Sing*, Marsh. 655, a zemindar, who had granted a ticca lease, collected rent from the raiyats for the purpose of satisfying the rent due from the ticcadar to him and retained a larger sum than was due from the latter. It was observed that the zemindar "may be said to have exacted the difference in excess of the rent due from the ticcadar." In *Chandramani Choudhurani* v. *Debendranath Roy Chowdry*, Marsh. 420, contemporaneously with the execution of a pottah, it was verbally agreed that the tenant should supply the zemindar with a certain quantity of rice, and that a deduction should be made from the rent reserved in respect thereof; the zemindar took proceedings against the tenant under Regulation VIII of 1819, for the recovery of the entire amount of rent, notwithstanding the tenant had supplied the rice, and was entitled to the deduction; the tenant, without contesting his liability, or demanding an investigation as to the amount due, paid the entire amount: *held*, that this was *not* "an exaction from the ryot of a sum in excess of the rent specified in the pottah" within the meaning of section 10 of Act X of 1859. In *Garibulla Paramanik* v. *Fakir Mahamad*, 10 W. R. 203, where, on the allegation that the defendant had sublet land to him for the purpose of raising crops under a contract to share the produce between them, the plaintiff sought to recover the *value* of his share of the crop which the defendant had appropriated, it was held that the claim was not for a sum exacted in excess of rent within the meaning of section 10 of Act X of 1859, and that, if proved, it might be enforced by the Small Cause Court. It is to be noted that this case did not decide that the defendant's appropriation of the whole crop was not an exaction, and that the plaintiff could not sue under section 10 of Act X of 1859; all that was decided was that the

plaintiff's suit, *as framed*, was not a claim for a sum exacted in excess of rent within the meaning of section 10 of Act X of 1859, and was maintainable in the Small Cause Court where it had been instituted.

Lawfully payable.—Penalty attaches only to exactions over and above the rent lawfully payable. Rent may not be lawfully recoverable but still lawfully payable, *e. g.*, (1) to a proprietor whose name has not been registered under Act VII B. C. of 1876 ; (2) to a holder of an estate or tenure who has not mentioned the particular tenancy in his return under the Cess Act IX B. C. of 1880 ; (3) to a permanent tenure-holder or a raiyat at fixed rates who has not registered his purchase or notified his succession under sections 12 and 17 of this Act ; or (4) to a raiyat of an amount more than 50 per cent. of his head-rent. In these cases the landlord would not be liable to any penalty.

Interest at more than 12 per cent. if not reserved in a contract made before the 14th of March, 1885, is illegal (secs. 67 and 178), and levy of such interest would now make the landlord liable to the penalty provided in this section. Where there are no previous contracts the landlords would, therefore, do well not to levy higher interests.

CHAPTER IX.

MISCELLANEOUS PROVISIONS AS TO LANDLORDS AND TENANTS.

Improvements.

THE provisions in this sub-chapter have been generally taken from the Rent Acts of Upper and Central India. They are new to Bengal, and a summary of them will be useful.

The principle on which these provisions proceed, is that that party to a tenancy, whose interest in the land preponderates, should have the preferential right to improve and take the full benefit of his improvements ; but that, if the party having this preferential right is unable or unwilling to avail himself of it, it should be open to the other party to make an improvement and reap the benefit of it.

Section 77 accordingly confers upon the raiyat at fixed rates and the occupancy-raiyat the preferential right to improve, and, if they do not avail themselves of this right, the landlord, if he so desires, may make the improvement. But if the improvement affects other holding or holdings, the landlord has the preferential right. Section 78 provides that, in a case of dispute, the Collector shall decide whether the landlord or the raiyat has the preferential right, and whether a particular work is or is not an improvement.

Section 79 enacts, what may be termed the inverse of these provisions for the case of the non-occupancy-raiyat, that is to say, it gives the preferential right to the landlord and allows the raiyat to improve only if the landlord, upon being requested by the raiyat to make an improvement, neglects to do so within a reasonable time. From this rule, however, there are two exceptions. The first exception is in favor of the erection of a dwelling-house for the raiyat and his family. This, it is considered, is an improvement which every raiyat should be entitled to make. The other exception is in favor of the construction of a well for the irrigation of his holding. The high importance of facilitating and encouraging the construction of all works of irrigation in this country with a view to the prevention of famine justifies the exception.

When a landlord makes an improvement, he will be entitled to reap the full benefit of it in the shape of an enhancement of the rent under the provisions of this Act (sec. 33). But the landlord's right to claim enhancement is not perfected, till he registers the improvement under section 80. In order to facilitate the decision of disputes regarding improvements, section 81 (based on section 80 of the Central Provinces Tenancy Act) provides that a landlord or a tenant, desiring to have any evidence recorded regarding an improvement which has been made, may apply to a Revenue-officer to record it, and that the record so made shall be admissible in evidence in subsequent proceedings between the parties.

When a raiyat makes an improvement under these provisions he will, if ejected, be entitled, under section 82, to compensation for the improvement; and section 83 enumerates the matters to be taken into consideration by the Court in estimating the compensation to be allowed. An occupancy-raiyat will, further, while he continues to hold, reap the full benefit of his improvements, inasmuch as his rent cannot be enhanced on account of such improvements.

It is a mistake to suppose that the provisions of this sub-chapter are due to radical opinions and to the Irish Land Acts. The Oudh Rent Act XIX of 1868 (which is anterior to the Irish Land Act of 1870) incorporated provisions regarding compensation for tenants' improvements (*see* sections 22 to 26), which are very similar to the provisions of this sub-chapter. It may be conceded that the principle of giving compensation for improvements when the raiyat is ejected, had no parallel in Indian law before the English time. But the reason for that is, that land belonged to the cultivator and he could never be ejected. In Europe, in every country where land belongs to a person other than the actual cultivator, compensation is allowed for improvements if the latter is ejected.

This sub-chapter only applies to improvements made of holdings, and concerns the raiyat and his landlord. When a tenure-holder makes any improvements, he makes

profit in increased rent from under-tenants so long as he holds the tenure, and when it is transferred, he gets increased price for the tenure.

Definition of "improvement."

76. (1) For the purposes of this Act, the term "improvement," used with reference to a raiyat's holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

This is new.

This definition of "improvement" is the same as in the Central Provinces Tenancy Act IX of 1883, with this difference that the word "value" replaces the word "letting-value" of that Act. In the North-Western Provinces and the Oudh Acts the words are "annual letting-value." The alteration was necessary because, under this Act when the improvement is made by the tenant, the letting-value or rent is not increased, and, even when the improvement is made by the landlord the increase of the letting-value may not follow if the land is unable to bear a higher rent (sec. 33, *ante*).

Not executed on the holding.—A well sunk on a neighbouring land, from which water may be drawn for irrigation of the particular land, and an embankment, at some distance, which protects it as well as many others, will thus be an improvement of that land. The following explanation is given in the Central Provinces Tenancy Act (sec. 3, cl. 8):—

Explanation 2.—A work which benefits several holdings may be deemed to be, with respect to each of them, an improvement.

(2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section:—

(*a*) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;

(*b*) the preparation of land for irrigation;

(*c*) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion, or other damage by water, of land used for agricultural purposes, or waste-land which is culturable;

(*d*) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;

(*e*) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto; and

(*f*) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.

This is new.

This sub-section enacts a rule of presumption, and the works mentioned in these six clauses are to be regarded improvements, till the contrary is proved. The contrary may be proved by showing that the work has not added to the value of the land (sub-sec. 1), or has substantially diminished the value of the landlord's other property (sub-sec. 3).

Clauses (*a*) to (*e*) are the same as in the Land Improvement Loans Act XIX B. C. of 1883. Clauses (*b*) and (*f*) have no place in the North-Western Provinces Rent Act XII of 1881 or the Oudh Rent Act XIX of 1868. Clause (*b*) has been enacted with an eye to the Bengal Irrigation Act, and the reason of clause (*f*) has already been explained. It is difficult to see what presumption there is in regarding "the permanent *improvement* of land for agricultural purposes" of clause (*d*) to be an *improvement* under this section.

(3) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property.

This is new.

This sub-section contains rather an exception to sub-sections (1) and (2) than any independent provision. The words "his landlord's property" include not only the particular holding held by the raiyat, but also other property owned by the same landlord. The Central Provinces Tenancy Act IX of 1883 provides "no work executed by the tenant of a holding is an improvement if it substantially diminishes the value of any other part of the estate of his landlord" (sec. 3, cl. 8). The present sub-section is more comprehensive.

Right to make improvements in case of holding at fixed rates and occupancy-holding.

77. (1) Where a raiyat holds at fixed rates or has an occupancy-right in his holding, neither the raiyat nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

This is new.

The Act is silent about the right of a superior landlord to make an improvement. Suppose, A, a raiyat holds land under B, an under-tenure-holder, who holds under C, a tenure-holder who in his turn holds under D, the proprietor. If neither A nor B is willing to make the improvement, it is only reasonable that C or D should be allowed to make it. Again, suppose, a considerable work of irrigation or drainage affecting several tenures would be an improvement, the proprietor of all the tenures should have the prior right to make it. Provisions clearly defining the mutual rights of the landlords of the different grades would have been useful now, that loans may be obtained from the Government to carry out agricultural improvements under Act XIX B, C. of 1883.

Along with this section should be read section 178, sub-section (1), clause (*d*), which provides that nothing in any contract between a landlord and a tenant made before or after the passing of this Act, shall take away the right of a tenant, as provided by this Act, to make improvements.

Collector to decide question as to right to make improvement, &c.

78. If a question arises between the raiyat and his landlord—

(*a*) as to the right to make an improvement, or

(*b*) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question, and his decision shall be final.

This is new.

This section applies when the question is between the raiyat and his *immediate* landlord. When the question is between a tenure-holder and his landlord or

between a raiyat and a superior landlord, there is, as already pointed out, no provision in this Act to have the question settled between them.

Right to make improvement in case of the non-occupancy-holding.

79. (1) A non-occupancy-raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlord's permission.

(2) A non-occupancy-raiyat who would, but for the want of his landlord's permission, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

This is new.

Registration of landlord's improvement.

80. (1) A landlord may, by application to such Revenue-officer as the Local Government may appoint, register any improvement which he has lawfully made, or which has been lawfully made at his expense, or which he has assisted a tenant in making.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the Local Government from time to time by rule directs.

(3) The officer receiving the application may reject it if it has not been made within twelve months—

(*a*) in the case of improvements made before the commencement of this Act—from the commencement of this Act;

(*b*) in the case of improvements made after the commencement of this Act—from the date of the completion of the work.

This is new.

This section applies only to landlord's improvements. It will be remembered, that the landlord may not enhance rent of the tenant by suit on the ground of his improvement, unless he has registered the improvement under the provisions of this section. (*See* sec. 33.)

The enquiry and evidence before the Revenue-officer under sub-section (2) are restricted to the ascertainment of the fact, whether the alleged improvement is really so and comes within the definition of section 76. [The Local Government rules state that the enquiry shall be limited to the ascertainment of the fact whether the alleged improvement is of such a nature as to come within the meaning of section 76, sub-section 2" (Rules 3 and 4, *infra*). That sub-section, though it enumerates all the improvements that will ordinarily be made, is, however, not meant to be exhaustive. It would therefore seem that "sub-section (2)" has been mentioned in those rules by inadvertence.]

May reject.—The Revenue-officer may, in his discretion, register improvements, even if application be made after the expiry of twelve months.

The Local Government has framed the following rules under this section :—

"1. An application for the registration of a landlord's improvement may be presented to the Collector of the district or to the officer in charge of the sub-division in which the land benefited by the improvement is situated, or to any Assistant or Deputy Collector who may be especially appointed by the Government to receive such application. It shall, as far as practicable, be in the form specified in Schedule I appended to these rules.

"2. The officer receiving the application may, if he thinks fit, require the applicant to present as many copies of the application as there are tenants mentioned in column 7 of the application, or as there are villages mentioned in column 2, and he may, as the case may be, either forward by registered letter copies to the tenants whose names are specified, or may give notice to the tenants by causing a copy to be fixed up in the presence of not less than two persons in some conspicuous place in every such village. In either case he shall fix a date for hearing objections to the application, and shall cause that date to be notified to the parties concerned, either by entering it in the copies forwarded by registered letter or by proclaiming it by beat of drum, and by posting, in the presence of not less than two persons, a notice declaring it in each village. The expenses of such service shall be borne by the applicant for registration.

"3. The officer may make over the application to any of his subordinates, not being below the rank of a canoongoe, for local enquiry and report, and shall, in that case, fix a date for hearing the report, and shall cause such date to be notified to the parties concerned in the manner set forth in Rule 2. The enquiry shall be limited to the ascertainment of the fact, whether the alleged improvement is of such a nature as to come within the meaning of section 76 (2), Bengal Tenancy Act, or not.

"4. On the date so fixed, or on any date to which the proceedings may be adjourned, the officer shall hear summarily such of the parties and their witnesses as may attend, and shall consider any report submitted to him under Rule 3. He shall then decide whether the work is an improvement as defined in section 76 (2), Bengal Tenancy Act, and whether the landlord is entitled to register it, and shall accordingly order it to be registered or refuse registration.

"5. Nothing hereinbefore contained shall preclude the officer receiving the application from holding a local enquiry in person, and from ordering the improvement to be registered, or refusing registration in accordance with the result of the enquiry so held.

"6. If an order refusing to register an improvement is passed by an officer lower in rank than the Collector of the district, such order shall not take effect until confirmed by the Collector of the district."

The form in the Schedule referred to in Rule (1) is as follows :—

Application under Section 80, Act VIII of 1885.

To

THE COLLECTOR OF

The application of , son of , resident of , for registration of an improvement under Section 80 of the Bengal Tenancy Act VIII of 1885.

1	2	3	4	5	6	7
Name of pergunnah and estate in which improvement has been effected.	Name of village in which improvement effected.	Nature of applicant's interest in land.	Nature of improvement.	By whom executed, and at whose expense	When executed	Names of tenants benefited, if not more than five in number.

A. B.,
Landlord.

81. (1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

Application to record evidence as to improvement.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in any subsequent proceedings between the landlord and tenant or any persons claiming under them.

This is new.

This section applies to both landlords and to raiyats; and the application under it is quite different from the application under the preceding section. Applications under both the sections may be simultaneously made by a landlord. This section is meant for the preservation of contemporaneous evidence which may be lost by efflux of time. The Revenue-officer will only record the evidence. He is not at liberty to record any finding on the evidence.

Under enquiry in a Civil Court.—The subject-matter may be under enquiry in a Civil Court if a suit for enhancement of rent is pending, when enhancement is wholly or partly claimed on the ground of landlord's improvement, or if an application under section 158 for determination of the incidents of the tenancy is pending and one of the points to be determined is the liability to enhancement.

Limitation.—The period of limitation for making an application under this section, would appear to be three years from the time of the completion of the improvement under art. 178 of Schedule II of the Limitation Act XV of 1877.

The Local Government has framed the following rule under sub-section (1) :—

"*Section* 81 (1).—Evidence relating to any improvement under this sub-section shall be recorded by the Revenue-officer specified in Rule 1 of this Chapter," (Rule 1 under sec. 80) "who shall exercise the powers of a Civil Court in the trial of suits, and shall be guided by the provisions of sections 182 and 184 of the Civil Procedure Code."

Section 182 of the Civil Procedure Code requires that the evidence shall be taken

down in writing in the language of the Court by, or in the presence and under the personal direction and superintendence of, the Judge, generally in the form of a narrative, and, when completed, shall be read over, and, if necessary, corrected and signed by the Judge. Section 184 requires that when the evidence is not taken in writing by the Judge, he shall make a memorandum of the substance of the evidence of each witness, and that the memorandum shall be written and signed by the Judge.

Compensation for raiyats' improvements.

82. (1) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his pedecessor in interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this section to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where the raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat between the 2nd day of March, 1883, and the commencement of this Act, shall be deemed to have been made in accordance with this Act.

(5) The Local Government may, from time to time, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

This is new.

Sub-section (1).—Section 178, sub-section (1), clause (*d*), provides that nothing in any contract between a landlord and a tenant made *before or after* the passing of this Act, shall take away the right of a tenant as provided by this Act to claim compensation for improvements.

It is for the landlord to prove that compensation has already been paid for the improvement to the raiyat or his predecessor in interest. A judgment-debtor whose holding is brought to sale for arrears of rent is not *in all respects* the predecessor in interest of the auction-purchaser who may annul incumbrances created by the former under the provisions of this Act (Chap. XIV). But for the purposes of this sub-section he is a predecessor in interest, and the auction-purchaser is entitled to claim compensation for improvements made by the defaulting judgment-debtor.

Sub-section (3).—The burden of proof is on the landlord to show that conpensation may not be claimed on any of the grounds mentioned in this sub-section.

Sub-section (4).—This sub-section makes the provisions of this section retrospective from the 2nd of March, 1883 (the date on which leave was obtained to introduce the Bengal Tenancy Bill into Council). Under the Central Provinces Tenancy Act, the provisions are retrospective without any limitation (sec. 30, sub-sec. 4). So in Bill No. I it was provided that improvements made by a raiyat before the commencement of this Act, should be deemed to have been made in accordance with this Act, unless the landlord forbade the raiyat to make the improvements (sec. 129, sub-sec. 4). But the Select Committee cut down the sub-section so as to prevent any retrospective effect regarding any improvement made before the 2nd of March, 1883. They, however, gave no reason for doing so.

Sub-section (5).—No rules have yet been framed by the Local Government requiring the Court to associate assessors with itself and determining the qualifications of those assessors and the mode of selecting them. The Committee appointed to consider and advise on the form of the rules under this Act remarked :—"With regard to section 82, it may be permitted to us, to hope that cases of ejectment will be rare. It is probable, too, that the amount of compensation awardable in such cases will not ordinarily be very large. It seems to us a matter of some difficulty to specify in a rule the qualifications of persons whose assistance would be useful to the Court; and we are unwilling to add to the costs of the trial by prescribing a procedure which would involve an expenditure incommensurate with the amount of the compensation. If it should be found hereafter, that the Courts experience a practical difficulty in the decision of these cases, and express a wish for the appointment of assessors, the question of making a rule may be further considered."

83. (1) In estimating the compensation to be awarded under the last foregoing section for an improvement, regard shall be had—

Principle on which compensation is to be estimated.

(*a*) to the amount by which the value, or the produce, of the holding, or the value of that produce, is increased by the improvement;

(*b*) to the condition of the improvement, and the probable duration of its effects;

(*c*) to the labour and capital required for the making of such an improvement;

(*d*) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(*e*) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the raiyat has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and raiyat agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

This is new.

Sub-section (1).—This sub-section enumerates the matters to be taken into consideration in assessing the amount of compensation to be awarded. The list is not meant to be an exhaustive one. The Oudh and the North-Western Provinces Acts provide that the Court shall also take into account any assistance given by the landlord, in money, material, or labour at the time of making the improvement.

Clause (e).—This clause has no place in the Central Provinces Tenancy Act IX of 1883, from which this section has been borrowed. It is rather misleading. The benefit enjoyed by the raiyat, when in the case of reclamation or irrigation he continues to hold at an unenhanced rent, is the *interest* of the capital he spent for

making the improvement. That interest may be high or low according to the prudence with which the improvement was made. But the length of time during which the interest has been received, has nothing to do with the compensation he ought to get for the improvement. The prudence, or otherwise of making the improvement at the cost at which it was made, may be considered in granting compensation, and the length of time may be taken into account in estimating the present efficacy of an improvement that was made a long time ago. But it is difficult to see for what other purpose the length of time during which the benefit of the improvement was enjoyed, may be considered. Take an exceptional case; A, a raiyat, by a lucky reclamation, which cost him Rs. 100, gets an additional outturn of Rs. 15 a year, and enjoys the holding for twelve years, when he is ejected. Will it be a ground of granting him no compensation, because he has got back the outlay with reasonable interest on it. This could hardly have been the intention of the Legislature. A money-lender, who lends money at a high interest, never loses the principal because he has received as interest more than the principal and a reasonable interest on it.

Sub-section (2).—The North-Western Provinces Act (XII of 1881) provides that such compensation may at the option of the landlord be made (1) by payment in money; (2) by a rent to be charged on the land; (3) by the grant of a beneficial lease; or (4) partly by one or more, and partly by the others or other of the same ways. This sub-section empowers the Court to direct payment otherwise than in money, when *both* the landlord and the raiyat agree. When they both are willing, the compensation may be an annual charge on the holding of a specified amount.

Amount of compensation.—The amount of compensation to be awarded will depend on the merits of each case. Generally, such amount will be the money which the landlord would have had to spend to bring the land of the holding from the state in which it was at the time of the creation of the tenancy to its present state. But if what was meant to be an improvement, has not added to the value of the holding, or has equally diminished the value of other property of the landlord, no compensation may be had.

Acquisition of land for building and other purposes.

Acquisition of land for building and other purposes.

84. A Civil Court may, on the application of the landlord of a holding,

and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or

of the estate in which it is comprised, including the use of the ground as building ground, or for any religious, educational or charitable purpose,

and on being satisfied on the certificate of the Collector that the purpose is reasonable and sufficient,

authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court, including full compensation to the tenant.

This is new.

The Select Committee reported :—" We have inserted a new section (84) giving power to landlords to acquire by compulsory sale, through the Civil Court and at a price to be fixed by the Court, any land in their estate required for building purposes or for religious, charitable or educational object. The necessity of some such power, especially with a view to provide building sites either for new tenants or in case of diluvion, has been strongly urged upon us. We have guarded the section against abuse by requiring the certificate of a Collector as to the sufficiency of the reason before action can be taken under it."

The Collector will have to certify to the sufficiency of the reason before the Court puts this section into operation.

Sub-letting.

Restrictions on sub-letting.

85. (1) If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent.

(2) A sub-lease by a raiyat shall not be admitted to registration if it purports to create a term exceeding nine years.

(3) Where a raiyat has, without the consent of his landlord, granted a sub-lease by an instrument registered before the commencement of this Act, the sub-lease shall not be valid for more than nine years from the commencement of this Act.

his is new.

This section, by implication, legalizes the right of sub-letting by raiyats of all the three classes. (1) Under the old Acts, a raiyat at fixed rates could not only sublet land of his holding, but the under-raiyat could acquire a right of occupancy (*Ramdhan Khan* v. *Haradhan Paramanik*, 12 W. R. 404). Under the present law, though sub-letting is allowed, the under-raiyat cannot acquire a right of occupancy under law; he can only do so if there is a custom or usage to that effect (sec. 183). (2) Under the old Acts, an occupancy-raiyat had a right to sublet, and he did not thereby incur any forfeiture of his tenancy (*Kalikisore Chatterjee* v. *Ram Charan Shaha*, 9 W. R. 344; *Haran Chandra Pal* v. *Mukta Sundari Choudhurain*, 10 W. R. 113, 1 Beng. A. C. 81; *Khosal Mahamad* v. *Jainaddin*, 12 W. R. 451). The law remains the same under this Act. Section 178, sub-section (3), clause (*e*), provides that nothing in any contract made *after* the passing of this Act shall take away the right of an occupancy-raiyat to sublet, subject to, and in accordance with, the provisions of this Act. If an occupancy-raiyat is bound by contract, made *before* the passing of this Act, not to sublet, and if forfeiture of tenancy is the penalty reserved, he may be ejected under the provisions of sections 25 and 155, if he sublets. The under-raiyat could under the old Acts acquire a right of occupancy if he held otherwise than for a term, or year by year (sec. 6 of Act X of 1859 and of Act VIII B. C. of 1869; *see* notes pp. 139-40). Under the present Act he can acquire no right of occupancy, except under custom or usage. (3) Under the old Acts, a non-occupancy-raiyat had no right to sublet. Under the present Act, he has such a right. He cannot be ejected otherwise than under the provisions of section 44, *ante;* and sub-letting is not one of the grounds under that section. But if forfeiture is reserved as a penalty for sub-letting, in the contract of tenancy, the non-occupancy-raiyat is liable to ejectment for sub-letting, on the ground of breach of condition.

A raiyat could not, under the old law, and cannot, under the present Act, alter the character of his tenancy and convert himself into a middleman by sub-letting land of his holding (*Ram Mangal Ghosh* v. *Lakhi Narayan Shaha*, 1 W. R. 71; *Karulal Thakur* v. *Lachmipat Dugar*, 7. W. R. 15; *Durga Prasanna Ghosh* v. *Kali Das Dutt*, 9 Cal. 449). It was once proposed (Bill No. II, sec. 37) to enact that a raiyat sub-letting more than half his holding, would convert himself into a tenure-holder. But the proposal was ultimately abandoned. The true test whether a tenant who has sublet his land is a raiyat or a tenure-holder is now, as it was under the old law, whether he acquired the land for purposes of agriculture and incidental purposes, or for collecting rent from under-tenants (*Ram Mangal Ghosh* v. *Lakhi Narayan Shaha*, 7 W. R. 15; *Kali Charan Sing* v. *Amiraddin*, 9 W. R. 579; *Durga Prasanna Ghosh* v. *Kali Das Dutt*, 9 Cal. 449; see *ante*, p. 31).

Under the old law it was held that an occupancy-raiyat could grant a mokarari lease, but the lease did only bind him. It was not binding on the superior landlord who was not deprived of any legal right which he possessed; but if he chose to dispossess the sub-lessee without the assistance of law, he could be treated as a trespasser (*Damri Sheikh* v. *Bisvesvar Lal*, 13 W. R. 291). The law remains the same under the present Act.

Sub-section (1).—This sub-section only contains a negative provision, that an unregistered sub-lease granted by a raiyat without his landlord's consent, is not binding on the latter. It does not enact that a registered sub-lease without his consent is binding on him. Such a sub-lease is only binding on him in certain matters. These are that in case of abandonment by the raiyat, the landlord is bound to offer the under-raiyat the option of taking the whole holding, on the terms on which the raiyat used to hold, for the remainder of the term of the sub-lease (sec. 87, sub-sec. 4), and that in case of surrender by the raiyat, such surrender shall not be valid unless made with the under-raiyat's consent (sec. 86, sub-sec. 6). But it would appear that the landlord may distrain the crop grown by the under-raiyat for arrears due from the raiyat, even if the lease is registered, unless the landlord consented in writing to the sub-letting (*see* sec. 121, prov. 3).

When the raiyat sublets with his landlord's consent or under power reserved in contract with his landlord, the sub-lessee obtains rights both against the raiyat and his landlord (*Nehalannessa* v. *Dhanulal Chowdry*, 13 W. R. 281).

Sub-section (2).—As the registered sub-lease of the under-raiyat affects the rights of the raiyat's landlord, who is no party to the transaction, in case of abandonment or surrender of his holding by the raiyat, this sub-section enacts that the sub-lease shall not be registered if it purports to create a term exceeding nine years. If it were simply provided that a sub-lease shall not be valid for more than nine years, a sub-lease for more than that term could be registered, and though such registration would not have made the sub-lease valid for more than nine years, it would, all the same, have bound the raiyat's landlord for those nine years. But the provision of this sub-section, forbidding its registration, leaves the raiyat's landlord free from obligations which would otherwise have arisen.

Sub-section (3).—This sub-section enacts a retrospective rule for registered sub-leases granted before the commencement of this Act. Such sub-leases will not be valid for more than nine years from the 1st of November, 1885.

Surrender and abandonment.

86. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

Surrender.

(2) But, notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a raiyat has surrendered his holding, the Court shall in the following cases for the purposes of sub-section (2) presume, until the contrary is shown, that such notice was so given, namely:—

(*a*) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(*b*) if the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(4) The raiyat may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a raiyat has surrendered his holding, the landlord may enter on the holding, and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer.

(7) Save as provided in the last foregoing sub-section, nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.

Old Acts.—Sub-sections (1), (2) and (4) replace section 19 of Act X of 1859 and section 20 of Act VIII B. C. of 1869. The others are new.

Sub-section (1).—The sections of the old Acts did not contain limiting words like "not bound by a lease or other agreement for *a fixed period*," but it was judicially held that those sections did not apply to cases where the raiyat had entered into a lease or agreement for a *specific period*. On the one hand, such a raiyat could not throw up his holding during the currency of the specific term of his lease (*Kasi Sing* v. *Onraet and Grant*, 5 W. R. X. 81). On the other, he was not bound to give notice if he surrendered at the expiration of that term (*Tilak Patak* v. *Mahabir Pande*, 15 W. R. 454, 7 Beng. App. 4). It is doubtful whether this last case is sound law now : when a raiyat surrenders at the end of the term of a lease, he is not bound by the lease to hold longer ; and it would appear that sub-section (1) would apply. The only raiyat who could be ejected on the expiration of the term of a lease is the non-occupancy-raiyat, and he is entitled to a six months' notice. It is hardly fair that a non-occupancy-raiyat, who is entitled to such a notice if he is to be ejected, will not be liable to give any notice if he wants to relinquish.

Under the old law, though a yearly raiyati-holding could be terminated at the end of any year, it did not terminate *ipso facto* at the end of every year, and notice of surrender under section 19 of Act X of 1859 was necessary (*Muladi Nasya* v. *Ballavi Kant Dhur*, 13 W. R. 190). It is much more necessary under the present law, when such a tenancy cannot be determined by the landlord at his option.

For a fixed period.—It was held in *Gopal Lal Chowdhuri* v. *Tarini Prasad Ghosh*, 9 W. R. 89, that a *perpetual* contract, by a party for his heirs and reciting that they should never relinquish the jote, could not operate against the law which said any raiyat might relinquish his jote if he did so according to the mode laid down by law. As already noted, the old sections had no limiting words, and this ruling would appear to be now set aside. The raiyat's remedy would be to bring the holding to sale for arrears of rent and thus to avoid it.

Whose surrender is valid.—A surrender by a Hindu widow having infant sons, cannot operate to destroy the title of the infants (*Syad Wahed Ali* v. *Gour Mohan Majumdar*, 1 Hay, 553). Where a member of a joint family was registered as jotedar in the zemindar's sherista, and it was found that his brothers were in ijmali possession with him, it was *held* that his relinquishment was not sufficient in law to authorize the zemindar to make arrangements with any others he pleased (*Baikanta Nath Das* v. *Bisvanath Majhi*, 9 W. R. 268). It is not clear from the report if the jote was a tenure or a holding. It will be noted that both this section and the sections of the old law referred to the surrender of a

raiyati-holding. If the tenancy in this ruling was a holding, the tenant might have been a raiyat at fixed rates or an occupancy or a non-occupancy-raiyat. In the case of the first, it would appear that the ruling is no longer good law in all cases, for this Act provides a system of registration of all transfers and therefore a transferee, who did not comply with the provisions of this Act, and whose name was therefore not notified to the landlord, may not plead when the relinquishment was by the registered raiyat, that that raiyat could not alone surrender the holding. In the case of an occupancy or a non-occupancy-raiyat, the ruling at 9 W. R. 268 would appear to remain valid.

Sub-section (2).—The notice must be followed by surrender, it is the surrender and not the notice that relieves the raiyat from the liability to pay rent (*Nabin Chandra Sarma Roy* v. *Lakhi Priya Devi*, 1 W. R. 20).

Notice may be verbal.—The old law required a notice "in writing." The omission of the words "in writing" would imply that the notice may now be verbal as well as written. The difficulty of proving a verbal notice of surrender is so great, that the raiyat will do well to serve a notice in writing either by registered letter or through the Civil Court under sub-section (4). Verbal notice seems to be contemplated in sub-section (3), when the raiyat takes a new holding or leaves the village.

Where a landlord served a notice on an *utbandi* raiyat that, unless he paid at an enhanced rent for the ensuing year, he was to quit the land, and the raiyat thereupon intimated to the landlord's agent his intention to relinquish the land, it was held that there was a sufficient surrender to free the raiyat from the liability to pay rent (*Kenny* v. *Iswar Chandra Poddar*, W. R. Sp. X. 9). But a mere conversation, when the landlord demanded more rent and the raiyat declined to pay using words to the effect "settle the land with other raiyats," was held insufficient to prove a surrender, and the landlord was not justified in letting the tenancy to another (*Banamali Ghosh* v. *Dilu Sardar*, 24 W. R. 118).

Loss of the rent.—Where land relinquished by a raiyat is settled by the landlord with other raiyats, there is no loss of rent to the landlord, and the former raiyat cannot be liable for rent, even though he did not strictly follow the provisions laid down by law (*Mahamad Gazi* v. *Sankar Lal*, 11 W. R. 53).

Agricultural year.—Under the old law, the notice was to be given in Pous where the Bengali year prevailed, and in Jyet where the Vilaity or Fasli year prevailed. Under the present Act, the notice is to be given three months before the end of the agricultural year. So, if the agricultural year ends in Jyet of the Fasli year, the notice should be given before the end of Falgun (*see* note under sec. 3, cl. 11, *ante*, pp. 22-3).

Sub-section (3).—This sub-section contains a presumption that the notice was given. The reason of the presumption was thus explained: "The question is—when the raiyat had surrendered, is he to be held liable for the payment of the next year's rent? If he has given three months' notice, the answer is no; if he has not given it, the answer is yes; but we look to the object with which three months' notice is required, and we say if he has left the village, or if he has exchanged his holding for another, then the landlord has already received the information which the notice is intended to secure, and it is here that the presumption comes in. The presumption is not a presumption of surrender, but of service of notice. The raiyat will then be able to say that he gave notice, because the landlord has let him another piece of land in the same village." (Bayley in Council.) It is when the raiyat has surrendered the holding, *i. e.*, ceased to occupy the lands of the holding, that the presumption in this sub-section arises. It arises only for the purposes of sub-section (2) in favor of the raiyat to take away his liability for future rent. It does not arise against him in favor of the landlord to justify his entering upon possession of the land as surrendered or abandoned.

Sub-section (4).—Under the old law, the notice might be served through the Collector. But only in case when the landlord or his agent refused to receive notice served on him personally by the raiyat or to sign receipt for it. Under the present Act, the notice may be served through the Civil Court. And it is not necessary that the raiyat should at first tender the notice personally to the landlord or his agent. In *Erskine* v. *Ram Kumar Roy*, 8 W. R. 221, it was remarked:—"If the Collector failed to serve the notice contemplated by law, his neglect of duty cannot affect the rights of the tenant." Under the present law, if the raiyat, without tendering the notice of surrender to the landlord at once applies under sub-section (4), and if the Civil Court fails to serve the notice, the raiyat's liability for rent would continue. It is important to note this point, for, if the raiyat, without previously tendering a notice to the landlord, applies to the Civil Court on a late day of the last month of the third quarter, and notice cannot be served on the landlord before the end of the month, the raiyat will continue to be liable if the landlord does not settle the land with other raiyats.

The Local Government has, under the powers given by section 189, framed the following rule about the service of notice under sub-section (2) and sub-section (4):—

"*Section* 86, (2) *and* (4).—If the raiyat elects to proceed under the second sub-section of this section, he may personally serve a written notice of his intention to surrender on his landlord; but if he elects to proceed under the 4th sub-section of the section, the notice of the raiyat's intention to surrender shall be served on the landlord in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the process-fee prescribed by the High Court."

An application for service of notice of relinquishment is exempt from Court-fee duty under clause 21, section 19 of Act VII of 1870.

Sub-secton (6).—The Select Committee reported :—" In dealing with surrender and abandonment, the only changes made by us which need here be noticed, are the provisions which we have inserted to check collusive surrender or abandonment in fraud of the rights of third parties. The necessity for this was brought to notice in para. 69 of the Bengal Goverment's letter of 15th September, where it is shown that raiyats not unfrequently sub-let the whole or a portion of their holdings in consideration of a large bonus for a term of years. To leave the interests of sub-lessees in such cases entirely at the mercy of the sub-lessor in collusion with his landlord, would do serious practical harm. We have therefore provided [section 86 (6)] that the surrender of a holding which is subject to a registered incumbrance, shall not be valid without the consent of the incumbrancer and the landlord, and in case of abandonment, we have provided [section 87 (4)] that the sub-lease shall only be avoided after the sub-lessee has had the opportunity of taking over for the unexpired period of his sub-lease the full rights and liabilities of his lessor in regard to the rent of his entire holding. These provisions appear to us to present the only method by which protection can be given to the sub-lessee without injury to the landlord, or without risking the conversion of these sub-leases into permanent transfers. In the case of sale, in execution of a decree for rent, the sub-lessee has the same protection as other incumbrancers under Chapter XIV."

It is clear from the context that sub-sections (1) to (4) are connected with each other, and refer only to the surrender by a raiyat who is not bound by a lease or other agreement for a fixed period. But it has been doubted whether the remaining sub-sections are so limited, or if they apply equally to a surrender during the currency of a tenancy for a fixed period, if the landlord chooses to accept the surrender. In *Hiramani* v. *Ganga Narayan Ray*, 10 W. R. 384, it was held that if a raiyat held land *for a term* and underlet that land, he could not determine the interest of his under-raiyat by surrendering his term to the landlord, because from the date of the under-lease he had parted with his interests in the land to the extent of the interest created by the under-lease, and the under-raiyat could not be ejected till the term of the raiyat or the term of the under-lease expired. If sub-section (6) be construed to be of general application, this ruling will be limited to the case of an under-raiyat who has got a registered lease. It is, however, submitted that sub-section (6) is not of general application, but restricted to the surrender by a raiyat who is not bound by a lease or other agreement for a fixed period.

Sub-section (7).—Under the old law, the raiyat could not relinquish a part of his holding, and as long as he retained possession of any part of his jote, he was

liable for the rent of the whole jote (*Sarada Sundari Devi* v. *Haji Mahamad Mundal*, 5 W. R. X. 78). So, where a joint tenancy was held by many persons with an entirety of interest, the surrender of some of the joint tenants did not operate to terminate the tenancy (see *Mahima Chandra Sen* v. *Pitamber Shaha*, 9 W. R. 147). The law remains the same under the present Act. In *Anarulla Sheikh* v. *Kailas Chandra Bose*, Ind. 8 Cal. 118, three plots of land were let to A under one kabulyat. A relinquished two plots and retained the possession of one, alleging that the kabulyat had been obtained by fraud and misrepresentation. *Held*, that if A wanted to avoid the tenancy, he should have relinquished all the three plots; or if he wanted the contract of tenancy rectified and altered on the ground of fraud, he should have brought a suit for the purpose under section 31 of the Specific Relief Act.

Gradual additions.—When additions are made to a raiyat's holding from time to time, the whole is generally treated as one holding, both in the raiyat's rent receipts and in the landlord's papers. It seems to be an open question, whether the raiyat may not surrender the old or the additional lands and retain the remainder. By analogy of section 50, sub-section (3), which provides that the operation of the rule and presumption of fixity of rent shall not be affected by the separation from, and amalgamation with, other lands, it may be inferred that the raiyat may surrender any such lands and retain the remainder. (See *Habela Sarkar* v. *Durga Kant Majumdar*, 11 W. R. 456; but the report is extremely meagre, and no inference may safely be drawn from it.)

Restriction on contracts.—Section 178, sub-section (3), clause (*c*), provides that nothing in any contract made between a landlord and a tenant after the passing of this Act, shall take away the right of a raiyat to surrender his holding in accordance with this section (86).

Application of this section.—This section applies only to raiyats, *i. e.*, (1) raiyats at fixed rates, (2) occupancy-raiyats, and (3) non-occupancy-raiyats, not bound by lease. It does not apply to either tenure-holders or to under-raiyats. The right of the under-raiyat not bound for any term to surrender his tenancy, is unquestionable. But it has been, like most other rights of this class of tenants, left unprovided for by this Act. As to a permanent tenure, it cannot be generally surrendered without the consent of the landlord. In *Hiralal Pal* v. *Nilmani Pal*, 20 W. R. 383, it was observed: "The point which we reserved for consideration in this case is whether it is optional with a patnidar to surrender the patni, which he holds, at any time, and to plead such surrender in answer to a suit for rent. We are clearly of opinion that, whether or not, the Civil Court might, upon sufficient ground, give relief in a suit brought to dissolve a contract

between the zemindar and his patnidar, it is certainly not open to a patnidar of his own choice to throw up the patni, and, by so doing, escape his liability to pay rent. We do not say that the contract is indissoluble, because many circumstances might arise in which the interference of a Court of Justice might fairly be invoked to put an end to it; but the dissolution of such a contract must, we think, be an act of the Court and the result of proper enquiry, and cannot be taken by the patnidar alone and pleaded in answer to a suit for rent." This ruling was followed in *Jadu Nath Ghosh* v. *Schoene, Kilburn & Co.*, Ind. 9 Cal. 671, where it was held that a darmourasi mokarari tenure not let for agricultural purposes, could not be put an end to by a mere relinquishment on the part of the lessee, although after notice to the landlord. It was remarked in this case by Field, J., that the principle laid down in *Hiralal Pal* v. *Nilmani Pal*, that a patnidar could not, of his own option, relinquish his tenure, was applicable to all intermediate tenures except those held on farming leases. As regards farming leases, it was held in *Raja Kishen Chandra Bahadur* v. *Sankari Dasi* (7 Sel. Rep. 174, o. e., 205, n. e.), that if the landlord took steps to increase the rent; the tenant had a right to surrender the lease, even if perpetual, and avoid liability.

Abandonment.

87. (1) If a raiyat voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant, or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause the notice to be published in such manner as the Local Government, by rule, directs.

(3) When a landlord enters under this section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-raiyat, six months, from the date of the publication of the notice; and thereupon the Court

may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sublet by a registered instrument, the landlord shall, before entering under this section on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat. If the sub-lessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease, and may enter on the holding and let it to another tenant, or cultivate it himself as provided in sub-sections (1) and (2).

This is new.

"The object of section 87 is to meet the difficulties which occur when a raiyat apparently abandons his holding, but in such circumstances as to give no assurance whether it is permanently abandoned or not. On the one hand, there is danger to the landlord of an action for dispossession, if he lets the land hastily to a tenant; on the other hand, there is danger of temporary absence being taken advantage of by the landlord to effect the dispossession of a raiyat. To meet these two dangers, we provide that if a raiyat abandons his residence without notice and without arranging for his cultivation and payment of rent, the presumption is that he has abandoned his holding. The landlord can then, after filing a notice in the Collector's office, enter on the holding and let it to another tenant. We give, however, a term of two years in which the raiyat can sue for re-admission, and the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession, on such terms as to payment of compensation and arrears of rent as it thinks fit." To protect third parties against collusive abandonment in fraud of their rights, we have provided in sub-section (4) "that the sub-lease shall only be avoided after the sub-lessee has had the opportunity of taking over, for the unexpired period of his sub-lease, the full rights and liabilities of his lessor in regard to the rent of his entire holding." (Bayley in Council.)

Sub-section (1).—This section applies only when all the three conditions mentioned in sub-section 1 has been satisfied, *i. e.*, (1) the raiyat has abandoned his resi-

dence without notice; (2) he has made no arrangement for payment of rent; and (3) there has been a discontinuance of cultivation of the land. If all the three conditions are not satisfied, the landlord has no right to enter into possession under this section. If a raiyat makes an invalid transfer and leaves his village, and the cultivation continues and the transferee is willing to pay rent, the landlord cannot enter into possession by himself under this section. But he *may sue* for setting aside the illegal transfer and for possession (*Harihar Mukerjee* v. *Jadunath Ghosh*, 7 W. R. 114). So, also, if the cultivation continues by an under-raiyat, but the raiyat is believed to have absconded, the landlord has no right to enter on the land without the assistance of the law (*Jamir Gazi* v. *Ganai Mand al*, 12 W. R. 110). This section contemplates the non-cultivation of the whole holding. No abandonment can be presumed from the non-cultivation of a small portion of the holding (*Radha Madhav Pal* v. *Kali Charan Pal*, 18 W. R. 41).

Sub-sections (2) and (3).—Under the old law, abandoning the land and neither cultivating it nor paying rent for it, was held to be a complete surrender (*Maniraddin* v. *Mahamad Ali*, 6 W. R. 67; *Nadiyar Chand Poddar* v. *Madhu Sudan De Poddar*, 7 W. R. 153; *Hara Das* v. *Gobind Bhattacharjee*, 3 Beng. App. 123, 12 W. R. 304; *Mati Sonar* v. *Gundur Sonar*, 20 W. R. 129; *Ram Chang* v. *Gora Chand Chang*, 24 W. R. 344; *Sheikh Manirulla* v. *Sheikh Ramzan Ali*, 1 Cal. 293; *Baidyanath Majhi Kaibarta* v. *Apurna Debi*, 10 Cal. 15; *Golam Ali Mandal* v. *Golap Sundari Dasi*, Ind. 8 Cal. 612, 10 Cal. 499). And the raiyat could not, under such circumstances, recover possession even if he sued within one year of his abandonment, though he could do so within that period if he was dispossessed by the landlord (*Hara Das* v. *Gobind Bhattacharjee*, 3 Beng. App. 123, 12 W. R. 304; sec. 30 of Act X of 1859; sec. 27 of Act VIII B. C. of 1869). This is now altered, and the raiyat may recover possession within two years, if an occupancy-raiyat, and within six months, if a non-occupancy-raiyat, from the notice of the landlord's intention to enter on the land. When the landlord enters on the land without such notice, the period of limitation under sub-section (3) does not apply. In such a case the landlord is a trepasser, and the period of limitation is two years from the *date of dispossession*, under art. 3 of Sched. III, *post*, in case of an occupancy-raiyat, and six months from the *date of dispossession*, under section 9 of Act I of 1877, in case of a non-occupancy-raiyat.

It has been objected that, as there is no sanction or penalty for the breach of sub-section (2), no landlord will give effect to it, specially when he may not enter on the land except at the end of the year. The objection is not sound. If a landlord enters into possession *otherwise than under law*, he is liable not only to an action for trespass, but also to one for damages. So that, if a landlord enters on land abandoned without filing a notice in the Collector's office under sub-section (2), not only may

the raiyat recover possession within two years or six months, as the case may be, from the time of the landlord's entry on the land, but the landlord runs the risk of having to pay damages, and it may also be difficult for him to find a raiyat to replace the old one, for the latter also may be liable for damages. If the landlord, however, enters on the land after filing the notice under sub-section (2), he will not only be safe against an action for damages, but may get compensation in return; so also is the new raiyat safe and entitled to compensation. These are valuable advantages which will certainly induce the landlord to follow the procedure laid down in these sub-sections.

The Local Government has framed the following rule for the publication of the notice under sub-section (2) :—

"*Section* 87.—A notice of the tenant's abandonment of his holding under sub-section (2) of this section shall be in the form specified in Schedule I, shall be published by beat of drum upon the holding alleged to be abandoned, and a copy thereof shall be affixed, in the presence of not less than two witnesses, to some dwelling-house or tree, or other conspicuous object upon the holding. The fee payable by the landlord shall be Re. 1."

The Local Government has prescribed the following form of the notice under sub-section (2), referred to in this "rule" :—

Notice under Section 87, Act VIII of 1885.

To

THE COLLECTOR OF

WHEREAS the holding mentioned below, and hitherto held by C. D., resident of , has been abandoned by him without notice to me and without arranging for the payment of the rent thereof, I hereby notify that I have treated the holding as abandoned and that I am about to re-enter upon it accordingly.

Dated } *Landlord.*

Schedule of Property.

Name of village and pergunnah in which situate.	Area and boundaries of holding.	Rent of holding.

Sub-section (4).—This sub-section only protects the under-raiyat with a registered lease. An under-raiyat without a registered lease is not protected; and as entering on the land after notice under sub-section (2) will be *in due course of law*, the under-raiyat cannot come under section 9 of Act I of 1877. The protection to the under-raiyat, who has a registered lease, is, again, more apparent than real. For, when the landlord and the raiyat collude together, they may always have or show rent in arrears for 3 or 4 years, and to an amount which will be practically prohibitive to the under-raiyat. But in many cases it will probably be the fault of the under-raiyat himself that will give the landlord the right to enter upon the land as abandoned. If he continues to cultivate, it is doubtful if the landlord may enter upon the land, for sub-section (1) makes the discontinuance of the cultivation of the holding by the raiyat or *some other person*, a condition precedent to the landlord's acquiring a right to enter upon lands as abandoned. Under-raiyats would do well to arrange with raiyats to pay their rent in satisfaction of the head-rent. In cases of abandonment, the real sufferers would be the poor under-raiyats who have sub-leased a small portion of the holding and cannot afford to take up the whole holding or pay its arrears.

Sub-division of tenancy.

Division of tenancy not binding on landlord without his consent.

88. A division of a tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord unless it is made with his consent in writing.

Old Acts.—Section 27, proviso of Act X of 1859; section 26, proviso of Act VIII B. C. of 1869. They ran as follows:—

"Provided, that no zemindar or superior tenant shall be required to admit to registry or give effect to any division or distribution of the rent payable on account of any such tenure, nor shall any such division or distribution of rent be valid and binding without the consent in writing of the zemindar or superior tenant."

Consent in writing.—Both the old Acts and the present Act require the landlord's consent *in writing*. But, when the landlord has once accepted the division of the tenancy and the distribution of the rent, he cannot turn back and plead want of consent in writing (*Bharat Roy* v. *Ganga Narain Mahapatra*, 14 W. R. 211). So, where the landlord himself put up a tenancy for sale in separate lots and took rents from two of the purchasers separately, it was held that no written consent was any longer necessary in order to his being bound to recognize the division of the tenancy and the distribution of the rent (*Nobokissen Mukerjee* v.

Sriram Roy, 15 W. R. 255). The mere fact, however, of the landlord accepting rent from the different shareholders of the tenancy in proportion to their respective share, is no evidence of the landlord's having consented to the division (*Gour Mohan Ray* v. *Ananda Mandal*, 22 W. R. 295). And if alleged, different tenures were indissolubly connected at the time of the original holder, and if the landlord, in receiving rent from the present holders, has dealt with them only as representatives of the original holder and as payers of component parts of the aggregate rental, he cannot be said to have accepted the division (*Rani Lalan Mani* v. *Sona Mani Debi*, 22 W. R. 334).

Rulings under the old law.—In *Tirthanand Thakur* v. *Matilal Misser*, Ind. 3 Cal. 774, it was held that even when occupancy-rights were transferable by custom, the division of a tenure or holding or the distribution of the rent payable in respect thereof would not be binding on the landlord; and if the tenant sub-divided and transferred to different persons, the landlord was entitled to treat the transferees as trespassers and to re-enter. The last portion of this ruling that the landlord was entitled to eject the transferees and re-enter on the tenure, would seem to be no longer correct law (*see* sec. 17). A transfer to different persons and a succession by different legatees are analogous, and where the right of transfer is valid, a transfer to different persons *inter vivos* is as valid as a testamentary bequest to different persons. In neither case is the landlord bound to accept the separate liability of the different successors in interest, but in neither case has he the right of re-entry on the tenancy.

In case of an invalid transfer of a portion of a tenancy by one of several co-sharers, the landlord may eject the transferee and re-enter on the land so transferred, but he may not eject the other shareholders and their tenancy is not forfeited (*Dasarathi Hari Chandra Mahapatra* v. *Ram Krishna Jana*, Ind. 9 Cal. 526).

Acceptance of division by an ijaradar.—If an ijaradar or farmer assents to the division of a tenancy, it is binding on the landlord who let out in ijara (*Harimohan Mukherjee* v. *Gorachand Mitter*, 2 W. R. X. 25). It was remarked:—"If he (the ijaradar) acts in collusion with the raiyats, and in fraud of his principal, his acts would not then bind his zemindar. But there is no such allegation in this action. The act of the ijaradar in this case was nothing more than the routine business of the estate, which it was his duty, as agent of the zemindar, to perform or abstain from, according as he considered would be best for the estate." (*Per* E. Jackson, J.):—And further, "I am clearly of opinion that the ijaradar, being the party entitled to the rents, would have had full power to accept a surrender of the defendant's tenure. Having accepted such surrender, he could have let out the lands surrendered, either as an entire holding to a stranger or part to the old tenant and

part to a new tenant." (*Per* Peacock, C. J.):—"The effect is, that acceptance of a division of the tenancy by an ijaradar will be binding on the permanent landlord, *unless such acceptance was in collusion with the tenant and in fraud of the principal;* and the burden of proving the collusion and fraud is on the landlord."

The converse of this section.—When tenants hold by different agreements the landlord has no right, without their consent, to break up existing holdings and redistribute lands so as to alter the extent and nature of the holdings : and the mere fact of the raiyat having made payments according to the wish of the landlord to particular agents is not sufficient evidence from which the tenant's consent may be inferred, though that fact would be strongly corroborative, if there is other evidence of consent (*Rahimaddi Akan* v. *Purna Chandra Ray*, 22 W. R. 336).

Ejectment.

No ejectment except in execution of decree.

89. No tenant shall be ejected from his tenure or holding except in execution of a decree.

Old Acts.—Section 21, proviso of Act X of 1859 ; section 22, proviso of Act VIII B. C. of 1879. These provisos applied only to occupancy-raiyats and raiyats holding under pottahs the term of which had not expired ; these raiyats could not be ejected, except in execution of a decree. The present section is general and applies to all tenants, except it be to under-raiyats.

Holding.—The definition of this word in section 3, clause 9, does not include the tenancy of an under-raiyat. But it seems that the word is here used in a wider sense, as it is in section 52, *ante*, and includes an under-raiyat's tenancy.

Grounds for ejectment.—The grounds on which a permanent tenure-holder, a raiyat at fixed rates, an occupancy-raiyat, a non-occupancy-raiyat and an under-raiyat may be ejected, are given in sections 10, 18, 25, 44 and 49, respectively. Tenants of the last two classes may also be ejected for arrears of rent due at the end of Chyet of the Bengali year or Jyet of the Fasli year (sec. 66). A non-permanent tenure-holder may be ejected for such arrears (sec. 66), and also on account of a breach of *any* condition carrying forfeiture (*see* note, *ante*, p. 47).

Relief against illegal ejectment.—If a tenant is ejected otherwise than in due course of law, *i.e.*, without suit (*Janardan Acharjee* v. *Haradhan Acharjee*, 9 W. R. 513, Beng. F. B. 1020), he may recover possession of the tenancy without adjudication of any question of title, if he brings a suit for the purpose within six months of the ejectment ; but such a suit does not lie against the Government (sec.

9 of Act I of 1877). A tenant may recover possession of land claimed by him as an occupancy-raiyat, if he sues within two years from the date of dispossession (art. 3, Sched. III of this Act). Possession of immovable property may be recovered within twelve years from the date of dispossession, if the plaintiff, while in possession, is dispossessed of it (art. 142, Sched. II of Act XV of 1877). The effect of these different provisions would appear to be that the remedies against illegal ejectment are as follows :—

1. In case of an under-raiyat without a lease, he has the only remedy to sue within six months under section 9 of Act I of 1877. If he has a lease, the term of which has not expired, he may either recover possession under section 9 of Act I of 1877, or he may bring a suit to recover possession after establishing his right within any time during the unexpired portion of the tenancy, but not later than twelve years from the date of dispossession.

2. In case of a non-occupancy-raiyat without a lease, he has, if he holds under a private landlord, the only remedy under section 9 of Act I of 1877. But if he holds under the Government as landlord, he has no remedy whatever. If he has a lease, the term of which has not expired, he may bring a suit to establish his right and recover possession, at any time within the unexpired period of the lease, but not after twelve years from the date of dispossession. Such a suit may be brought both against a private landlord and against Government.

3. In case of a raiyat having a mere right of occupancy, if he holds under a private landlord, he may recover possession under section 9. If he holds under the Government as landlord, he has not this remedy. But in either case he may, by establishing his right as occupancy-raiyat, recover possession within two years from the date of dispossession (a). Further, if he holds under a lease, of which the term has not expired, he may recover possession by establishing the lease at any time within the unexpired period of the lease, but not after twelve years from the date of dispossession.

4. In case of a non-permanent tenure-holder without a lease, he may recover possession within six months under section 9 of Act I of 1877. But if he holds under the Government as landlord, he has no remedy. If he has a lease, the term

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(a) It was doubtful whether under the old Acts, in case of a raiyat who had a mere right of occupancy and who had been ejected by his landlord, the limitation of one year under section 27 of Act VIII B. C. of 1869 applied. It was sometimes held that the one year's limitation did apply (*Brindaban Chandra Sarkar* v. *Dhananjoy Laskar*, Ind. 5 Cal. 246). It was at other times held that the one year's limitation did not apply (*Jayanti Dasi* v. *Mahamad Ali Khan*, Ind. 9 Cal. 423). Article 3, Schedule III, *post*, now settles the question by enacting a two years' rule of limitation in such cases. (*See* notes under that *art.* in Sched. III, *post.*)

of which has not expired, he may in either case recover possession after establishing his right at any time within the unexpired portion of the lease, but not after twelve years from the date of dispossession.

5, 6 & 7. In case of a raiyat at fixed rate, a raiyat having a higher right than a mere right of occupancy or a permanent tenure-holder, he may recover possession within six months under section 9 of Act I of 1877, unless he holds under the Government as landlord. He may also recover possession after establishing his right within twelve years from the date of the dispossession.

Restriction on contracts.—Section 178, sub-section (1), clause (*c*), provides that nothing contained in any contract made either before or after the passing of this Act, shall entitle any landlord to eject a tenant otherwise than in accordance with the provisions of this Act.

Measurements.

Landlord's right to measure land.

90. (1) Subject to the provisions of this section and any contract, a landlord may, by himself, or by any person authorized by him in this behalf, enter on and measure all land comprised in his estate or tenure, other than land exempt from the payment of revenue.

Old Acts.—Section 9, para. 1 of Act VI B. C. of 1862; section 25 of Act VIII B. C. of 1869.

His estate or tenure.—Under the old Acts, "every proprietor of an estate or tenure, or other person in receipt of the rents of an estate or tenure" had the right of making the measurement. And it was an open question, whether a proprietor not in receipt of rents was entitled to measure. In one case, the words "in receipt of rents" were held to govern not only "other person," but also "every proprietor of an estate or tenure" (*Wise* v. *Ram Chandra Baisak*, 7 W. R. 415). In another case, however, it was observed that the words "in receipt of rents" had no reference to "every proprietor of an estate or tenure," but only to "other person," *i.e.*, other than the admitted proprietor (*Rani Kristamani* v. *Ram Nidhi Sarkar*, 9 W. R. 331). And it was generally held, in a number of cases, that no landlord had a right of measurement, unless he was in possession of the property (*Raj Chandra Ray* v. *Kinu Lahiri*, 4 W. R. X. 16; *Kali Das Nandi* v. *Ramgati Dutt*, 6 W. R. X. 10; *Parijan Khatoon* v. *Baikunta Chandra Chakravarti*, 7 W. R. 96; *Doorga Charan Majumdar* v. *Mahamad Abbas Bhuya*, 14 W. R. 399, 6 Beng. 361). The words of the present Act are "a landlord may measure all land comprised in *his* estate or tenure." So

that where the landlord is admittedly the owner of the estate or tenure, no question of possession arises. A proprietor of an estate, having his name registered under Act VII B. C. of 1876, would appear to have a right of measurement irrespective of possession. So also will probably have the permanent tenure-holder, who will have his name registered under the Permanent Tenures Registration Act (when passed), a right of measurement without having to show possession.

All land comprised in his estate or tenure.—The owner of an estate or tenure is not precluded from measuring lands of the property by reason of there being permanent subordinate tenancies within it, or by reason of the lands being sublet to a third party (*Babu Ran Bahadur Sing* v. *Mularam Tewari*, 8 W. R. 149; *Tweedie* v. *Ram Narain Das*, 9 W. R. 151; *Rani Kristamani Debi* v. *Ramnidhi Sarcar*, 9 W. R. 331; *Rajendra Kumar Ray Chowdry* v. *Dinabandhu Acharjee*, 9 Cal. 444).

All land, &c., other than land exempt from the payment of revenue.—These words have not the effect of precluding an owner of a revenue-free estate to measure lands of such estate. But they mean that if, within the external boundaries of a revenue-free or revenue-paying estate or of a tenure, there be some lands which are revenue-free, the owner of the estate or tenure has no right to measure these revenue-free lands. In order to claim exemption, the land must not only be revenue-free, but must also be "*comprised* in the estate or tenure"; and the words "landlord" and "comprised" show that the exempted land should be only a *part* of the estate or tenure, and held revenue-free by a person *other than* the owner of the estate.

Under the old law also, a proprietor or rent-receiver could not measure revenue-free lands within his estate or tenure (*Prasannamayi Debi* v. *Chandra Nath Chowdry*, 10 W. R. 361, 2 Beng. s. n. 5; *Ranga Lal Sahu* v. *Sailadhar Das*, 11 W. R. 293, 3 Beng. App. 27; *Golam Khejur* v. *Erskine*, 11 W. R. 445; *Khagendra Nath Mullick* v. *Kantiram Pal*, 14 W. R. 368).

The distinction between revenue-free and rent-free land should be noted. The landlord is precluded from measuring only the former. He has a right to measure the latter. The word *lakhiraj* is ordinarily used to mean both, and when a person claims exemption on the ground that his land is lakhiraj, it should be ascertained whether he claims the land to be rent-free or to be revenue-free, for it is only in the latter case that his claim need be looked into.

(2) A landlord shall not, without the consent of the tenant, or the written permission of the Collector, be entitled to measure

land more than once in ten years, except in the following cases (namely):—

(*a*) where the area of the tenure or holding is liable, by reason of alluvion or diluvion, to vary from year to year, and the rent payable depends on the area;

(*b*) where the area under cultivation is liable to vary from year to year and the rent payable depends on the area under cultivation;

(*c*) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.

(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

These two sub-sections are new.

The object of these sub-sections is to prevent harassment to the tenant by continual threats of measuring the land. There is nothing the raiyat objects to so much as having his land measured, and it is one of the most powerful engines of making the raiyat come to terms. It is to take away the landlord's power in this respect that these sub-sections were enacted. The landlord's interest is at the same time protected by the exceptions in sub-section (2), which provides for three classes of cases in which the landlord may require to measure oftener than once in ten years. And in an exceptional case, which does not fall within these classes, the landlord may apply to the Collector for a written permission for making the measurement.

Power for Court to order tenant to attend and point out boundaries.

91. (1). Where a landlord desires to measure any land which he is entitled to measure under the last foregoing section, the Civil Court may, on the application of the landlord, make an order requiring the tenant to attend and point out the boundaries of the land.

(2) If the tenant refuses or neglects to comply with the

order, a map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

Old Acts.—Section 9, paras. 2 and 3 of Act VI B. C. of 1862; section 37 of Act VIII B. C. of 1869.

The old Acts expressly required the Civil Court or the Collector to determine the right of the landlord to make the measurement and to pass a decision allowing or disallowing the measurement. And though this section does not require the Civil Court to determine the point, it has to be determined before an order may be made requiring the attendance of the tenant; for it is only on the application of a person "entitled to measure under the last foregoing section," that an order may be made under this section.

Civil Court.—Under Act VIII B. C. of 1869, the application was to be made in the Civil Court which had jurisdiction in case a suit had been brought for the recovery of such land. It is also so under this Act (sec. 144, sub-sec. 2).

The tenant.—Under the old law a single suit might be brought against several tenants, though their rights and tenancies might be different (*Sasi Bhusan Banerjee* v. *Naba Kumar Chatterjee*, 8 W. R. 94). It would appear that, under the present Act also, a single application may be made for the attendance of several tenants. Under the General Clauses' Act I of 1868 (sec. 2, cl. 2), words in the singular include the plural.

Stamp.—The Court-fee stamp on an application under this section would be 8 annas under Sched. II, art. 1, cl. (*b*), para. 2 of the Court Fees Act VII of 1870.

Order.—Where an application is made against several tenants, the order should specify the different times and places when and where each of the tenants should attend. When the application is heard *ex parte* and tenants do not appear to oppose it, notice of the order should be given to the tenants in such way as the Court thinks fit.

Sub-section (2).—Under the old Acts, the presumption was a conclusive one, and a raiyat or an under-tenant, who refused or neglected to attend at the time ordered, could not contest the correctness of the measurement made in his absence. This is now altered, and the presumption is only a rebuttable one. The presumption may be rebutted by proving that the area of the land of the tenancy is less than given in the landlord's measurement paper.

Standard of measurement.

92. (1) Every measurement of land made by order of a Civil Court, or of a Revenue-officer, in any suit or proceeding between a landlord and tenant, shall be made by the acre, unless the Court or Revenue-officer directs that it be made by any other specified standard.

(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.

(3) The Local Government may, after local enquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area, and every declaration so made shall be presumed to be correct until the contrary is shown.

Old Acts.—Sub-section (1) replaces section 11 of Act VI B. C. of 1862 and section 41 of Act VIII B. C. of 1869. Sub-sections (2) and (3) are new.

Under the old Acts, the measurement was to be made according to the standard pole of measurement of the perganá. This is now the exception and not the rule. The reason of the alteration was explained by the Rent Commission :— "The length of the local standard pole, with which a measurement of land should be made, is a fertile subject of dispute and litigation. It is not uncommon for a landlord to make a measurement of his lands with a pole of his own selection, the actual length of which must be a subject of doubt upon the evidence, while the raiyats concerned aver not only that the standard pole of the perganá is different, but that during the measurement a third pole has occasionally been substituted for that which the landlord claims to be the standard." In order to avoid these uncertainties, as far as possible, sub-section (1) enacts that all measurements made by order of the Civil Court or the Collector shall be made by the acre.

No rules have yet been framed by the Local Government under sub-section (3). The Committee appointed to consider and advise on the form of the rules under this Act, observed : "The definition of local standards of measurement, under section 92 (3), is a matter which demands very careful previous enquiry, and the information at our disposal does not justify us in recommending that the Government should put forward any declaration on the subject at present."

Managers.

The provisions of this sub-chapter are substantially the same as those recommended by the Rent Commission. They explained the reason of their recommendations as follows :—

"A serious source of difficulty in the relations between landlords and tenants arises out of the system of co-parcenary which is customary amongst Hindus, and is not uncommonly imitated by Mahomedans. When co-parceners, or co-sharers, as they are commonly called, stand in the position of landlords, and manage their affairs, either through a single member of the family or through a manager appointed by, and acting for, all, there is no difficulty, and the tenants are put to no greater inconvenience than the tenants of other landlords. But when, on the contrary, the co-sharers are disunited and dissension prevails among them, their tenants are exposed to considerable harassment. The rent is payable to the co-sharers jointly, and properly upon their joint receipt; but each attempts to collect separately the share to which he conceives himself entitled; and the tenant, who would comply with all their demands, would find that he had to pay a considerable amount more than his actual rent. Then the servants and adherents of each co-sharer seek their own perquisites, and, in order to obtain these, delude the ignorant ryots, who are thus induced to pay more rent to one co-sharer than he is entitled to receive, or, for the purpose of manufacturing evidence, receipts are given for a larger share, while in fact less sums were paid than appear in these fraudulent documents. Each co-sharer attempts to enhance the rents of his share, although no partition has been made; or each seeks to make a measurement, and rival *amins* prepare *chitahs*, the entries in which are regulated by the gratifications which the ryots are able or willing to give them. Litigation ensues, and the tenants side with this co-sharer or that; they give evidence and earn brief gratitude from one party, undying hatred from the other. A riot takes place between the adherents of the opposite parties, and the police appear on the spot to reap a rich harvest. The ryots are impoverished, cultivation thrown back, and distrust and dissension pervade the village. Such is a picture, by no means overdrawn, of the pernicious results of want of union amongst a brotherhood of landlords.

"The necessity of a remedy for this state of things was felt at an early period of British administration, and, in 1812, it was enacted that, inasmuch as inconvenience to the public and injury to private rights had been experienced in certain cases from disputes subsisting among the proprietors of joint undivided estates, whenever sufficient cause shall be shown by the Revenue authorities or by any of the individuals holding an interest in such estates for the interposition of the Courts of Judi-

cature, it shall be competent to the Zillah Judges to appoint a person duly qualified and under proper security to manage the estate; that is, to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate (Regulation V of 1812, section 26). The Judge was also competent, upon the representation of the Revenue authorities, or of any such person as aforesaid, to remove any manager so appointed (*id.*, section 27). A subsequent Regulation (V of 1827) enacted that, when the Zilla Court thought it just and proper under the provision of that Regulation to provide for the administration or management of landed property, it should issue a precept to the Collector directing him to hold the estate in attachment and appoint a person for the due care and management thereof, under good and adequate security for the faithful discharge of the trust in a sum proportionate to the extent thereof. The reference in Regulation V of 1827 to Regulation V of 1812 was repealed by Act XVI of 1874, so that it is not now competent to a District Judge to send a precept to the Collector directing him to provide for the management of an estate belonging to a joint undivided family. The fragment of Regulation V of 1812 which is still in force is incomplete, and in consequence almost inoperative.

"Such being the present state of law, a majority of us have thought that this fragment might well be repealed, and a complete set of effective provisions substituted therefor."

Power to call upon co-owners to show cause why they should not appoint a common manager.

93. When any dispute exists between co-owners of an estate or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue,

(*a*) inconvenience to the public, or

(*b*) injury to private rights,

the District Judge may, on the application in case (*a*) of the Collecter, and in case (*b*) of any one having an interest in the estate or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager:

Provided that a co-owner of an estate or tenure shall not be entitled to apply under this section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an

estate, unless his name and the extent of his interest are registered under the Land Registration Act, 1876.

Old Acts.—Section 26 of Regulation V of 1812. The section ran as follows :—

"Inconvenience to the public and injury to private rights having been experienced in certain cases from disputes subsisting among the proprietors of joint undivided esates, it is hereby enacted that whenever sufficient cause shall be shown by the Revenue authorities or by any of the individuals holding an interest in such estates for the interposition of the Courts of Judicature, it shall be competent to the Zillah and City Judges to appoint a person duly qualified and under proper security to manage the estate, that is, to collect the rents and discharge the public revenue and provide for the cultivation and future improvement of the estate."

Co-owners of an estate or tenure.—The old law applied only to the case of a "joint undivided estate"; this section applies to both estates and tenures. The term "co-owners" has not been defined in this Act; but it would appear that co-sharers of an estate or a tenure whose lands are undivided, are contemplated. Where lands have been partitioned, there can scarcely arise any inconvenience to the public or injury to private rights. A consideration of section 188, *post* (*see* notes thereunder), would show that co-sharers of undivided property, are within the purview of this section, irrespective of the question whether they used to collect rent separately or not. So under Regulation V if the estate was "undivided," section 26 applied.

Provided, &c.—The proviso prevents the provisions of this sub-chapter being made a means, by a person whose title is disputed and who has no possession, of establishing his right or harassing the persons that are actually in possession.

Power to order them to appoint a manager if cause is not shown.

94. If the co-owners fail to show cause as aforesaid within one month after service of a notice under the last foregoing section, the District Judge may make an order directing them to appoint a common manager, and a copy of the order shall be served on any co-owner who did not appear before it was made.

This is new.

Power to appoint manager if order is not obeyed.

95. If the co-owners do not, within such period, not being less than one month after the making of an order under the last foregoing section, as the District

Judge may fix in this behalf, or, where the order has been served as directed by that section, within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time,—

(*a*) direct that the estate or tenure be managed by the Court of Wards in any case in which the Court of Wards consents to undertake the management thereof; or

(*b*) in any case appoint a manager.

This is new.

One of the co-owners may be appointed manager by the District Judge (*see* the next section).

Power to nominate person to act in all cases under clause (*b*) of last section.

96. The Local Government may nominate a person for any local area to manage all estates and tenures within that local area for which it may be necessary to appoint a manager under clause (*b*) of the last foregoing section; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge, unless in the case of any estate the Judge thinks fit to appoint one of the co-owners themselves as manager.

This is new.

The Court of Wards Act, 1879, applicable to management by Court of Wards.

97. In any case in which the Court of Wards undertakes under section 95 the management of an estate or tenure, so much of the provisions of the Court of Wards Act, 1879, as relates to the management of immovable property shall apply to the management.

This is new.

Provisions applicable to manager.

98. (1) A manager appointed under section 95 may, if the District Judge thinks fit, be remunerated by a fixed salary or percentage of the money

collected by him as manager, or partly in one way, and partly in the other, as the District Judge from time to time directs.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge, have, for the purposes of management, the same powers as the co-owners jointly might but for his appointment have exercised, and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under section 103.

(8) He shall be removable by the order of the District Judge, and not otherwise.

This section is new, except sub-section 2 which replaces a part of section 26 of Regulation V of 1812, and sub-section 8 which replaces section 27 of that Regulation.

Power to restore management to co-owners.

99. When an estate or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under section 95, the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

This is new.

100. The High Court may, from time to time, make rules defining the powers and duties of managers under the foregoing sections.

Power to make rules.

This is new.

The High Court have proposed the following rules under this section :—

"1. Every manager appointed under Chapter IX of the Bengal Tenancy Act shall, in all matters, act in accordance with such orders as may, from time to time, be issued by the District Judge.

"2. The manager shall pay the Government revenue, rent, and other demands of the like nature, as also all just liabilities upon the estate, in due and proper time.

"3. No manager shall have power to sell or mortgage any property, nor shall he grant or renew a lease for any period exceeding three years, without the express sanction of the District Judge: Provided that this rule shall not render valid any lease for a shorter time than three years, if such lease is disapproved by the District Judge, or if the District Judge directs that his sanction is to be obtained as regards all leases granted by the manager.

"4. The manager shall apply for the sanction of the District Judge to any act which may involve extraordinary expense."

CHAPTER X.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

THIS is an important Chapter, and its provisions are new to Bengal. This Act repeals the Settlement Act VIII B. C. of 1879; and the provisions of this Chapter now govern Government settlements in Bengal. They are not, however, confined to such settlements, but may be applied to an individual estate or tenure, or any part of it. As observed in Council, this Chapter "provides for the first serious attempt, to secure that which is absolutely required, by means of careful record-of-rights, not only for the better administration of the country, but for a better understanding between the landlords and tenants of their respective positions."

The Famine Commission recommended that, in Bengal, a general field survey should be undertaken, and a system of village-records and accounts introduced. The Government of India accepted the recommendation and in their letter to the

Secretary of State for India, about the Bengal Tenancy Bill, dated 21st of March, 1882, remarked :—" Whether we have regard to the prevention of famine, or to the waste of life, or waste of money which may directly result from official ignorance or uncertainty as to the approach or dimensions of famine ; whether we look to the need of active administration which shall search out and expose deep-seated evils, or to the lack of some solid assurance that facts affecting agricultural interests shall be so notorious and indisputable, that none shall be able to pervert them to the injury of the weak, we perceive, in the circumstances of many portions of Bengal, and particularly of Behar, strong reasons for placing the Bengal officials on a level, in point of administrative advantages, with their brother officers in other provinces. * * * Our chief desire was, and is, that our officers shall understand the rural economy of their districts, in order that they may be properly equipped for their frequent contests with calamity or wrong. * * * There are special circumstances, prominent in the present discussions, which seem to us to render this administrative improvement particularly necessary in the Lower Provinces. Nowhere are the condition of the tenantry and their relation with their landlords, questions of so great complexity ; nowhere have they a more important bearing upon the public welfare. *The land question, it will be admitted, is the great administrative problem in Bengal.* Yet nowhere is the Government at a greater disadvantage in considering it. To introduce a system of village-records in such form as may be best suited to the circumstances of Bengal, would be to improve local knowledge, and to enable the Collectors more effectively to examine and deal with the various interests and difficulties arising out of the relations of landlord and tenant. But the great advantage would be that this system, supplementing the operation of the Bill, would bring to an end the uncertainty which now prevails on all points touching the status and rental of the tenantry." The Government of India proposed a system of village-records and field-surveys, commencing with the Patna Division. The Secretary of State for India, in his reply (Despatch No. 54), dated the 17th August, 1882, observed :—" While fully admitting the advantages which would attend the establishment of village-records and accounts, the formation of a record-of-rights, and the introduction of a field-survey, I cannot avoid the apprehension that the difficulties of carrying out these measures in those parts of Bengal in which village accounts and accountants, if they ever existed, have long ago entirely disappeared, even from tradition and remembrance, may prove greater than you anticipate. Your present proposal, however, merely contemplates an experimental commencement of the work in the Patna Division of the Provinces of Behar, where the need for it is, you think, most pressing, and the conditions least unfavorable ; and to this I shall make no objection. I shall be glad, however, to receive full reports of the progress of the work, of the expenditure likely to be incurred, of the difficulties

culties which may be encountered, and of the expedients by which they may, in your opinion, be overcome."

This Chapter has been framed in accordance with the above views. As the Bill originally stood, record-of-rights and settlement of rents were separately provided in separate chapters. The Revenue-officer undertaking a record-of-rights had no power to decide disputes and to settle rents. But that process was supplemented by the other process called the settlement of rents. These processes have been amalgamated in the Act. "It was obvious that on a Revenue-officer beginning to record rights he would find himself face to face with numerous cases in which, on one side or the other, the status of the raiyat, the area of the holding, the amount of rent payable, were the subject of dispute. Unless he could deal with these disputes his record would be of little value, and it was obviously absurd to empower one officer to settle questions of status and area, and then to send another to settle questions of rent. It seemed equally unreasonable to empower a Revenue-officer, with all the parties and witnesses before him, to decide disputes, and then to allow the whole matter to be re-opened *de novo* and fought out from the beginning in a Civil Court. At the same time we wished in no way to diminish the security which parties now have in the decision of their cases by the most competent Courts and in the right of appeal to the highest Court in the country."

The provisions of this Chapter were thus summarized in Council :—

"What we have done then, has been to give the Revenue-officer, in the first instance, power to settle all disputes that may come before him. Where no dispute arises, he will record what he finds, he will not alter rents, and his entries will only have a presumptive value in cases afterwards brought before the Courts ; where a dispute arises, he will decide it, on the same grounds, by the same rules, and with the same procedure, as a Civil Court. His decision will be liable to appeal like that of the ordinary Civil Court to a Special Judge, who may or may not be the Judge of the district, and will be a subject to a further special appeal to the High Court. In appeal the High Court may settle a new rent, but in so doing, is to be guided by the other rents shown in the rent-roll. In other words, there can be no second appeal to the High Court merely on the ground that the rent has been pitched too high or too low ; but if a second appeal is preferred, as it may be, on the ground that the special Judge, owing to some error on a point of law, has, for example, found the holding to comprise more land or less land than it actually does comprise, or has given the raiyat a wrong status, and the appellant succeeds, the High Court can, without altering the rates, reduce or increase the rent, as the case may be. The decision of the Revenue-officer in disputed cases, subject to these

appeals, will have the effect of a judgment of the Civil Court, and will be *res judicata*, thus barring a fresh suit for enhancement for 15 years. In section 103 we have given a special power to landlords to have this procedure applied, on depositing the expenses, to individual estates, and we apprehend that in the cases of auction-purchasers who are met by a combination of their tenants and are unable to get at the papers of their predecessor, this power will be found very useful. In sections 105 and 106 we have made ample provisions for the publication of the record and for hearing objections, so as to eliminate the danger of any one being prejudiced by entries made behind his back. All this applies to ordinary settlements which may be undertaken either by direction of the Government of India, or by order of the Local Government on the application of the parties, or in the case of serious disputes, or in Court of Wards or Government estates or where an estate is under settlement. In fact, this procedure is the only procedure which will now be at the disposal of Government for the purposes of a revenue settlement. But this procedure allows of no alteration of rent except on the application of the individual landlord or individual tenant, and allows of no reduction of rents, except on the two or three grounds, such as diminished area and diminished prices, which can be pleaded as grounds of reduction in a Civil Court. We have, however, provided for a special settlement to meet special circumstances. Under the special settlement (section 112), the Settlement-officer will have power to settle all rents, and will, moreover, have power to reduce rents on other grounds than those ordinarily applicable, and all such rents as he settles will hold good for the same term of years as if fixed under a judicial decree. But this procedure, which gives unusual powers of interference, and which is meant to be applied only in circumstances in which the operation of the ordinary law is likely to prove insufficient, requires some strict safeguard. We have therefore provided that it shall only be applied after the previous sanction of the Governor-General in Council has been obtained. It is an extreme power intended to take the place of Sir R. Temple's Agrarian Outrage Act, and I trust it will be resorted to as little as that Act was; but it seems desirable that in the exceptional cases in which it may be necessary to have recourse to this procedure, the Government should have the power of going to the root of the disputes and should be able to put the whole relations of landlord and tenant on a stable footing for a reasonable period."

Power to order survey and preparation of record-of-rights.

101. (1) The Local Government may, in any case with the previous sanction of the Governor-General in Council, and may, if it thinks fit, without such sanction in any of the cases next hereinafter mentioned, make an

order directing that a survey be made, and a record-of-rights be prepared, in respect of the lands in a local area by a Revenue-officer.

(2) The cases in which an order may be made under this section without the previous sanction of the Governor-General in Council are the following (namely) :—

(*a*) where the landlord or a large proportion of the landlords or of the tenants applies for such an order and deposits, or gives security for, such amount, for the payment of expenses, as the Local Government directs;

(*b*) where the preparation of such a record is calculated to settle or avert a serious dispute existing or likely to arise between the tenants and their landlords generally;

(*c*) where the local area is comprised in an estate or tenure which belongs to, or is managed by, the Government or the Court of Wards; and

(*d*) where a settlement of revenue is being made in respect of the local area.

(3) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

This is new.

The following notifications have been published under this and the next section in the *Calcutta Gazette* of the 4th November, 1885, and of the 12th May, 1886.

"*The 4th November*, 1885.—Under the powers conferred upon him by section 101 (1) of the Bengal Tenancy Act VIII of 1885, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor is pleased to order that a survey shall be made, and a record-of-rights prepared, in respect of all lands in-

cluded within the external boundaries of pergunnah Gudesswar and Tuppehs Chukla Nye and Butsaleh in the district of Mozufferpore.

"The particulars to be recorded in the survey and record-of-rights shall be the following :—

"The name of each proprietor, with the character and extent of his interest.

The situation, quantity, and boundaries of proprietors' private lands, as defined in Chapter XI of the Act.

"The name of each tenant.

"The class to which he belongs: that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure.

"The situation, quantity, and boundaries of the land held by him.

"The name of his landlord.

"The rent payable.

"The mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise.

"If the rent is a gradually increasing rent, the time at which, and the steps by which, it increases.

"The special conditions, and incidents, if any, of the tenancy."

"*The 6th of May, 1886.*—Under the powers conferred upon him by section 101 of the Bengal Tenancy Act VIII of 1885, the Lieutenant-Governor has been pleased to order that a survey shall be made, and a record-of-rights prepared, in respect of all lands included within the boundaries of the Government estate of Chur Nulchera, in the district of Noakhally.

"The particulars to be recorded in the survey and record-of-rights shall be the following :—

"The name of each proprietor, with the character and extent of the interest.

"The situation, quantity, and boundaries of proprietors' private lands, as defined in Chapter XI of the Act.

"The name of each tenant.

"The class to which he belongs: that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat,

and, if he is a tenure-holder, whether he is a permanant tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure.

"The situation, quantity, and boundaries of the land held by him.

"The name of his landlord.

"The rent payable.

"The mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise.

"If the rent is a gradually increasing rent, the time at which, and the steps by which, it increases.

"The special conditions, and incidents, if any, of the tenancy."

Under the powers conferred upon it by section 189, *post*, the Local Government has framed the following rules to regulate the procedure to be followed by the Revenue-officer in the discharge of the duty imposed upon him by the provisions of this Chapter.

General.

"1. In carrying out the following rules, (*i. e.*, all rules under this Act), Revenue-officers shall have regard to the instructions of the Board of Revenue for the guidance of Revenue-officers, so far as such instructions are consistent with the rules herein prescribed under Act VIII of 1885.

"2. Except where otherwise provided for by law or by these rules, all proceedings and orders of Revenue-officers, passed in the discharge of any duty imposed upon them by or under this Act, shall be subject to the supervision and control of the Board of Revenue; and the orders of each Revenue-officer under this Act shall be subject to the supervision and control of the Revenue-officers to whom he may be declared by the Board of Revenue to be, for the purposes of the Act, subordinate.

"The Collector and the Commissioner, in whose jurisdiction operations under these rules are in progress, shall be entitled to inform themselves of the nature and progress of such operations."

Record-of-Rights and Settlement of rents.

Powers of Revenue-officers.

"1. Revenue-officers appointed to be Settlement-officers or Assistant Settlement-officers for the purpose of making surveys, records-of-rights, settlement of rents, determination of proprietors' private lands, and such like proceedings, or any one or more of them under the Tenancy Act, are hereby vested with all

powers exercised by a Civil Court in the trial of suits, and with the powers mentioned in section 189 (1) (*b*) and (*c*) of the Tenancy Act VIII of 1885.

"2. Deputy Superintendents of Survey and Assistant Superintendents of Survey employed in operations under these rules, are hereby declared to be Revenue-officers for the purposes of performing any duty imposed upon them by these rules, or by instructions, consistent with these rules, issued by the Board of Revenue. They are hereby vested with the powers specified in section 189 (1) (*b*), provided that an Assistant Superintendent shall not exercise the powers vested in a Superintendent under the Bengal Survey Act.

Procedure for cadastral survey and record-of-rights.

"3. The following processes will ordinarily be comprised in a cadastral survey, record-of-rights, and settlement of rents :—

I.—Demarcation of boundaries.
II.—Measurement.
III.—Testing of measurement.
IV.—Record of rents and rights.
V.—Determination of fair rents on application, and, in certain cases, without application of parties.

Demarcation of boundaries before cadastral survey.

"4. The demarcation of village boundaries shall be carried out in accordance with the definition of a village given in section 3 (10), and the boundary according to possession, where different from that demarcated as above, shall also be shown on the map.

"5. Boundary pillars of a permanent nature shall be erected at every point where the boundaries of three or more villages meet, and may be erected wherever the Revenue-officer considers it necessary to define by pillars the boundaries of estates or tenures or of lands which have been the subject of dispute.

Measurement.

"6. A field map of every village shall be prepared. It shall show the boundaries of every field separately assessed to rent, or of such plot of land as the instructions of the Board of Revenue for giving effect to these rules may lay down.

"7. A field register or *khasrah* shall be prepared at the time of survey in the following form, or such similar form, as the Board of Revenue may direct.

"8. In preparing the *khasrah* and *khatian*, officers shall be guided by such instructions, consistent with these rules, as the Board of Revenue may issue for the purpose of giving effect to these rules.

FORM OF KHASRAH.

1		2	3	4	5	6	7	8	9	10							11		12			13		14	15
FIELD.										CROPPED AREA.							DETAILS OF UNCROPPED LAND.		RATE OF RENT OF RAIYAT.			RATE OF RENT OF UNDER-RAIYAT.			
										Bhadoi.		Rabi.		Agani.											
a	b																		a	b	c	a	b		
Number.	Boundaries.	Name of estate or share of estate.	Name of proprietor and landlord, with parentage, caste, and residence.	Name of raiyat, father's name, caste, and residence.	Name of under-raiyat, father's name, caste, and residence.	Area in bighas of square yards according to which measurement has been made.	Area in village bigha of háths to the laggi.	Method of irrigation.	Non-irrigated.	Crop.	Area.	Crop.	Area.	Crop.	Area.	Dofasli area.	Class of lands.	Area.	According to zemindar.	According to raiyat.	According to patwari.	According to raiyat.	According to under-raiyat.	Class of soils.	REMARKS.

The Board of Revenue has given the following instructions for preparing the khasrah in the survey of Mozufferpore:—

The external boundaries of villages will be measured with the Gunter's chain and plotted on the scale of 16 or 24 or 32 inches to the mile in the skeleton sheets, according to the discretion of the Deputy Superintendent of the Survey Department.

The measurement of fields will be made with a chain, divided and sub-divided according to the bigha in most general use in the Pergunnah.

1. The amins will write up, or cause to be written, one copy of the khasrah and one copy of the khatians in Hindi.

2. The unit of measurement will be a field (locally known as a kitta), that is to say, the plot separately assessed to rent under existing arrangements and in occupancy of the same raiyat. It is only the patwari or the raiyats and zemindars or their agents themselves who can point out on the spot what area constitutes a kitta or field, and the boundaries thereof; and the amin must survey and map separately every plot which is pointed out to him as a separate kitta or field, however small it may be, and though two such kittas are contiguous and belong to the same occupant.

3. *Column* 1 (*b*) *of the khasrah.*—In this column will be entered the name of the occupant of one field in each of the four sides of the field surveyed. It is not enough to enter "east of the preceding field" (*numberwala se purab*). The boundaries should be given as follows:—

North	...	...	...	A. B.'s field.
South	...	...	...	C. D.'s "
East	...	...	...	E. F.'s "
West	...	...	...	This raiyat's field, number so and so.

4. *Khasrah, column* 2. *Name of estate or share of estate.*—If the village contain more than one mehal or estate, the name of the mehal or estate to which the field belongs will be entered in this column.

5. If the mehal or estate has been divided by regular *butwara* or by private partition, the name of the *patti* to which each field belongs should be also entered in this column.

6. When a dispute arises as to the *patti* or mehal to which a field belongs, the amin will note the particulars of the dispute in his dispute list, and proceed with the measurement, leaving the column for the disputed entry blank.

7. *Khasrah, column* 3. *Name of the proprietor and landlord, with parentage and caste.*—In this column will appear name of proprietor, father's name, caste, and residence, and if the proprietor has mortgaged his share or let it in thika, the name of the mortgagee or thikadar will also appear in it.

8. In case proprietors, mortgagees and tenure-holders are so numerous, that their names cannot be conveniently entered in column 3, only the names of the person to whom rent is immediately payable and of the principal proprietor need be entered, a reference being made to the entries in the *khewat*, which show the names of all the other landlords.

9. The names of owners of land held revenue-free from Government should likewise be shown in column 3, but the names of holders of lands claimed to be held rent-free from proprietors should not be shown in it. The latter will be entered in column 4, and their rent will be entered as zero. The rents paid by the tenants of the latter lakhirajdars should be shown in column 13.

10. *Column* 4. *Name of raiyat.*—If the patwari, landlord, and raiyat all agree as to the name of the occupant, the name as given by them will be entered. If there be a dispute as to who is the occupant, the amin will leave this column blank, note the allegations made by the (*a*) raiyat, (*b*) patwari, and (*c*) zemindar in the list of disputes, and proceed with the measurement. He will send a list of such disputes to his departmental superior, who will refer them to the Settlement-officer, so that the latter may, if possible, proceed to settle the dispute while the survey is going on.

11. Land cultivated by the proprietor or thikadar, is to be entered in column 4, thus: "Cultivated by the proprietor or thikadar," as the case may be. The length of time the land is alleged to have been so cultivated may be given in the column of remarks as stated by (*a*) the landlord, (*b*) by the patwari, (*c*) by the jeth raiyats. The Settlement-officer will subsequently determine, in accordance with rules laid down in the Chapter on Record-of-Rights, as to each such plot, whether it is really *nij-jote*, *sir* or *zerat*, within the meaning of the Tenancy Act, or merely land cultivated by the proprietor, but not *sir*. Length of cultivation or possession need not be recorded by the survey amins in any case other than that of land cultivated by the proprietor himself; and the Settlement-officer may, if he find that the record of length of possession by amins leads to disputes or retards the work, direct that the amin do not record length of possession even in such cases.

12. *Column* 5. *Names of under-raiyats.*—In this column will be entered the names of under-tenants locally called "Kartouli or Kaloiti Assamees." Where lands have been sublet under kartouli pottahs to indigo factories, the name of the lessee should be entered in this column.

13. *Column* 6.—Area in pergunnah bighas of 4,225 square yards is to be given, and should be worked out and explained to the parties daily as the measurement proceeds.

14. *Column* 7. *Area in local bighas.*—The local bigha is stated in the survey records of 1847 to be that of 6½ hâths to the laggi, or 4,225 square yards. It will, however, be found that the bigha actually in use is in many villages somewhat different. The amin will record in each mehal the length of the village laggi according to which rents are now assessed as stated by (*a*) the landlord, (*b*) the tenant, (*c*) the patwari. In case of dispute he will make an entry in his dispute list, and the matter will be referred to the Settlement-officer. The Settlement-officer, if he has not already settled the question at the time of the demarcation, will, after local enquiry, ascertain what the area of the village bigha is, and notify his decision to the Survey-officers, who can fill in column 8, by converting the area in bighas of 6½ hâths to the area in village bighas. In many cases the village bigha will be found to be the bigha of 6½ hâths to the laggi. It is of great importance, with a view to the determination of what are fair rents, that the exact length of the village laggi, on which rents are now actually paid, should be accurately ascertained. It is not enough to say the laggi is of so many "hâths:" the length of the so-called hâth must also be ascertained. In some cases

the "hâth" will be found to be a cubit of eighteen inches: in others it will be found that the "hâth" was determined by the length of a particular individual's forearm. Disregard of facts of this kind may lead to serious injustice in determining amounts of rentals, should they be calculated at existing rates on areas resulting from scientific survey. Should the conversion of areas of fields from the pergunnah to village bighas cause much extra labour, it may be found sufficient to convert the total areas of each class of land by soil, such as of *dhanhar* and *bhit* in the holding, into village bighas.

15. *Columns* 8 *to* 11. *Method of irrigation, cropped areas, details of uncropped land.*—The Survey-officers will give detailed directions for filling up the columns relating to irrigation and for the compilation of statistics of cropped areas. The instructions given should, however, be submitted to, and approved by, the Settlement-officer.

The following remarks should be borne in mind in giving instructions in these matters:—

All cultivated fields in the district are either single-cropped or double-cropped. There are three descriptions of crops locally known as—

(1) *Bhadoi*, sown in Jeth and Asarh.

(2) *Aghani*, sown in Bhadro and Assin, generally *dhan* crop.

(3) *Rabi*, sown in Aghan and Pous.

Single-cropped fields are those which are found to grow in the year of survey only a *bhadoi* crop, or only an *aghani* crop (i. e., *dhan*), or only a *rabi* crop. Double-cropped are those which grow in the year of survey—

(*a*) *Bhadoi* and *Rabi*.—Bhit land will be found generally to be of this kind; or

(*b*) *Aghani* and *Rabi*.—Some *dhan* fields will be found to be of this kind, growing *dhan* for *aghani*, and *tisi* or *khesari* for *rabi*.

It must be remembered, that the single-cropped lands need not necessarily grow only one product. There may be two or more crops growing simultaneously for *bhadoi;* for example, there may be growing at the same time in the same land *makai* and *urid*. If this land does not grow a *rabi* crop in the same year, it will still be *ekfasla*.

The names of all crops grown in the year of survey should be entered. There may be *murwa* for the *bhadoi* harvest, and *jao*, *tisi* and *sarso* for the *rabi* harvest. It will not be enough to enter merely *murwa* and *jao*. The entry must be made in this way—

Bhadoi	...	...	...	...	Murwa.
Rabi	...	...	...	...	Jao, Tisi, Sarso.

16. *Column* 12 *of the khasrah. Rate of rent of raiyat.*—In this column the amin will enter the rate of rent of nagdi lands as stated—(*a*) by the landlord, (*b*) by the raiyat, (*c*) by the patwari. The amin will not make any attempt to determine what the rate actually is. He will merely record the rates as alleged by the three parties named above. It is not ordinarily necessary for the purposes of the Tenancy Act to determine the rate of rent, except where questions arise regarding fixed rates. Such questions, when they have to be determined at all, will be determined by the Settlement-officer. If any of the three

parties named does not attend at the time of the measurement, or attend and says he is ignorant of the rate, the column regarding his statement may be left blank, and the reason may be noted in the column of remarks.

(*a*) If the land is held *bhaoli*, the word *bhaoli* will be written in this column. If alleged to be held *munkhap*, that is to say, on a lump sum rental of so much grain for an entire holding, and not so much per bigha, then the word *munkhap* will be entered with particulars of the amount of rent.

(*b*) If the land is claimed to be held rent-free from the zemindar, the rate of rent, as stated by the raiyat, will be entered zero, and a remark added thus—claimed rent-free "*muafi brahmottar*," "*sivottar*," or "*devottar*," as the case may be. If the landlord denies that the land is held rent-free, the rate, as stated by him, will also be entered.

17. *Column* 13 *of the khasrah. Rate of rent of under-raiyat.*—In this column the amin will enter the rate of rent paid by the under-raiyat as stated (*a*) by the head raiyat, (*b*) by the under-raiyat. If the land is held under a kartouli pottah, the rate given in the pottah should be entered.

18. *Column* 14 *of the khasrah. Class of soils.*—In this column will be entered the class of soil as locally known and recognized by the cultivators of the district; not that to which the amin may have been accustomed in other districts. The local classification of soils is into *dhanhar* and *bhit*. *Dhanhar* is land on which *aman dhan* is grown in the year of survey. *Bhit* or upland is all other cultivated land. *Dhanhar* may be found to be sub-divided at present into first class, second class, and so on. Where this is the case, the amin will enter *dhanhar aul*, or *dhanhar duim*, as the case may be.

Bhit in the same way may be found to be locally classified into manured upland near the village site; upland outside the belt of land round the village site; and usar. But the rule to be remembered is, that whatever the local classification known to the patwari, raiyat and landlord may be found to be, it is that classification the particulars of which will be ascertained by the Settlement-officer in communication with the Deputy Superintendent of Survey, which should be followed in the khasrahs and described in the village reports, and not the amin's ideas on the quality of the land.

9. Khatians or abstracts of the particulars of every raiyat's and under-raiyat's holding, and so far as may be of the tenure of every tenure-holder and under-tenure-holder, shall be prepared in the following form,* or such similar form as the Board of Revenue may prescribe.

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* *See* next page.

FORM OF KHATIAN.

Khatian of A.B., son of C.D., of mouzah , pergunnah , mehal , district

, the property of , proprietors

1	2	3	4	5		6	7	8	9	10		11		12			13	14	15	16	17	18	19	20
Name of landlord.	Serial number of raiyat.	Name of raiyat with parent's name, caste and residence.	Name of under-raiyat with parent's name, caste and residence, and number of under-raiyat's khatian.	KHASRAH NUMBER OF FIELDS AND BOUNDARIES THEREOF.		RENT-PAYING AREA IN—				PRESENT RENT.							Fair rent fixed by Revenue-officer (if any).	Class of holding and, in case of non-occupancy-raiyats, length of possession.	Mode in which rent has been fixed, *i. e.*, whether by contract, order of the Court, or otherwise.	If the rent is gradually increasing, the time at which, and the steps by which, it increases.	The special conditions and incidents of the tenancy (if any).	Enumeration of columns the entries in which have been the subject of dispute.	Enumeration of columns the entries in which have *not* been the subject of dispute.	REMARKS.
						Bighas according to which measurement was made of square yards.			Total area in village bighas.	According to zemindar.		According to raiyat.		As ascertained by Revenue-officer.										
				Number.	Boundaries.	Cultivated.	Not cultivated.	Total.		(*a*) Rent.	(*b*) Cesses.	(*a*) Rent.	(*b*) Cesses.	(*a*) Rent.	(*b*) Cesses.	(*c*) Total.								

NOTE.—The heading of columns 10 and 11 will, for khatians of under-raiyats, be changed to "according to raiyat," and "according to under-raiyat," respectively. In the case of tenure-holder's *khatians*, the heading of column 11 will be "according to tenure-holder," and in the case of under-tenure-holder's *khatians*, the heading of columns 10 and 11 will be altered to "according to tenure-holder" and "according to under-tenure-holder," respectively.

The Board of Revenue has given the following instructions for the guidance of Survey and Revenue-officers in the preparation of khatians in the survey of Mozufferpore:—

The Survey-officers will make out jamabandi slips or khatians, and they will make over the slips for each village to the Settlement-officer as soon after the amin has left the village as is possible. The Survey-officers will fill in only the columns of the khatians which relate to undisputed possession and occupancy, area, crops, irrigation, statistics, rates of rent, field by field. They will not concern themselves with total amounts of rentals of holdings, questions of right, or disputed questions of possession and occupancy, which will be enquired into and determined by the Settlement-officer.

1. *Jamabandi slips to be made for each holding, tenure and under-tenure.*—Separate jamabandi slips will be prepared for each tenure-holder, raiyat and under-raiyat in each estate; and if a cultivator holds in more than one share of a partitioned estate, a separate slip will be prepared for each share. The slips for tenure and under-tenure-holders will be separated by the Settlement-officer after determination of each tenant's status from raiyats' khatians, and will be separately filed.

2. *Separate slips should be prepared for the following items also:—*

(1) Groves (baghs).

(2) Culturable waste (new) (jadid).

(3) Culturable waste (old) (kadim).

(4) Village sites (basgit).

(5) Barren waste (ghair mumkin).

(6) Tanks and nalas.

(7) Roads belonging to Government.

(8). Other roads.

3. Before the amin begins cadastral measurments, he should obtain from the patwari or from the landlord's agent a list, alphabetically arranged, of all the raiyats and other occupants of land in the block which he has to measure. This list would be a copy of the patwari's *jamabandi*, re-arranged alphabetically for each estate or share of an estate.

4. As the measurement proceeds, the amin will enter opposite each occupant's name the serial numbers of the fields held by him; and in the evening of each day he will fill in columns 1 to 9 of each raiyat's *khatian*. If, for example, fields Nos. 8, 9, 10 belong to A. B, the amin will write down the figures 8, 9, 10 opposite A. B's name at the time of measurement, and in the evening he will fill up the other columns of A. B's *khatian*.

5. As the *khatian* is written up day by day, so should all that is entered in it be, as far as practicable, explained day by day to the tenants and landlords concerned; in other words, what is called the "tazdiq" (attestation) should proceed day by day with the measurement; so that, if any body interested has any objection to any entry made relating to his fields, he should be able to have his objection cleared up before the amin leaves the village.

INSTRUCTIONS FOR FILLING UP THE COLUMNS OF THE KHATIAN.

Column 1. *Name of landlord.*—Should there be a large number of sharers, only the name of the principal landlord to whom rent is immediately payable need be entered, but a reference should be made to the entry in the *khewat* containing the names of all other landlords.

Column 3.—Will contain the names and descriptions of all the cultivators or sharers in the field, as well as the names of mortgagees in cases where the fields are mortgaged.

Column 4.—Will show the names of under-raiyats with a reference to the number of the *khatian* in which the particulars of the under-raiyats' holdings will be found.

Column 6.—The sub-columns of this column will show the area of each class of land by soil in the holding, such as *dhanhar*, *bhit*.

Column 9.—Area in village bighas will be filled in by the Survey-officers after receipt of notification of the length of the village laggi current in each mehal from the Settlement-officer.

Columns 10, 11, 12.—Amount of present rent according to zemindar, raiyat and patwari will be filled in by the Settlement-officers.

Columns 13, 14, 15, 16.—*Fair rent fixed, if any; class of holding; mode in which rent has been fixed; special incidents of the tenancy.*—These columns will be filled in by the Settlement-officers in accordance with the rules prescribed in the chapter on the "Record-of-Rights."

Record of Rights.

"10. The Record of Rights shall consist of, and be contained in—

I.—The khewat.

II.—The khatain.

Rights of Proprietors.

"11. The khewat shall contain a record of the character and extent of proprietary interests.

"12. It shall be prepared in the following manner:—

(*a*)—An extract from the Collector's Registers A, B, C, D, framed under the Land Registration Act VII B. C. of 1876, containing the names, extent, and character of the interests of proprietors of all revenue-paying and revenue-free lands comprised within the mouzah, shall be supplied by the Collector of the district to the Revenue-officer on the latter's application.

(*b*)—If the Revenue-officer finds that the proprietary interests existing in the village are in accordance with the entries regarding extent and character of proprietary interests as given in the Collector's registers, he shall have the entries copied into the khewat, which will form the record of proprietary and proprietary-mortgagees' interests for the purposes of the record of rights under the Tenancy Act. The extracts from the Collector's land-revenue registers will also show the names and proprietary interests of managers and mortgagees of all revenue-free property within the village.

(*c*)—If any person claiming as proprietor or as assignee or mortgagee of an alleged proprietor deny the accuracy of the khewat as copied from Collector's registers, the Revenue-officer shall refer him to the Collector of the district and shall also report the fact to the Collector in order that action may, if necessary, be taken under the Land Registration Act, to compel registration of the proprietor's name.

(*d*)—In any proceeding under Chapter X, the Revenue-officer may, at his discretion, recognize as proprietor the person in possession of the land, pending the registration of his name and interest under the Land Registration Act.

Proprietor's private lands,—nij-jote, sir, zerat or khamar.

"13. Only land which is proprietor's private land, as defined in section 120 of the Tenancy Act, will be entered as such. Land which, though cultivated by the proprietor, is not proprietor's private land within the meaning of the law, will be entered thus—"Cultivated by the proprietor, but not private land." Separate khatians will be prepared for such land and for "Proprietor's private land."

Rights of tenure-holders, raiyats and under-raiyats.

"14. The record of tenure-holders', raiyats' and under-raiyats' rights shall be prepared in the following manner :—

"15. As soon as possible after the completion of the field measurements of each village, the following papers shall be made over to the Revenue-officer :—

(1) The map. | (2) The amin's khasrah. | (3) The khatain.

"16. On receipt of these papers, the Revenue-officer shall issue a notification, which may be in the form given in Schedule I attached to these rules, fixing a day, which shall not be less than one month from the date of issue of the notification, on which he will be present at some place to be specified, at or near

the village, and after which applications for the settlement of fair rents will not be received. The notification shall further state that, on the day so fixed, or on any other day to which the proceedings may be adjourned, the Revenue-officer will proceed to record rents when the circumstances are such as are specified in section 104 (1); or to settle fair and equitable rents on the application of either party; or on the Revenue-officer's own motion when the case falls under section 104 (2); and it shall require all parties interested in the subject-matter of the enquiry to attend at the time and place specified, with such evidence as they have to offer in connexion with the proceedings. Such notice shall be forwarded to the Sub-divisional Officer and the Munsif within whose jurisdiction the land is situated to be affixed in their respective Courts, and it shall also be published by proclamation and beat of drum and fixed up in the presence of not less than two persons in some conspicuous place in the village to which it refers.

Form of Notice under Rule 16 (Schedule 1).

Notice to the proprietors, tenure-holders, landlords, raiyats, and under-raiyats of—

Village
Pergunnah
Thana
District

Take notice that, under the powers vested in me by the Bengal Tenancy Act VIII of 1885, and the Rules made thereunder, I shall, on the day of 188 , at , proceed to record the rents of all tenants holding or cultivating lands in the abovenamed village; I shall also, at the said time and place, or at such other time to which the proceedings may be adjourned, proceed, on the application previously made of either landlord or tenant, to settle fair and equitable rents under section 104, sub-sections 2 and 3 of the said Act. Furthermore, notice is given that, should it then appear that any tenant is holding land in excess of or less than that for which he is paying rent, and should neither the landlord nor tenant apply to have a fair rent settled, I shall, in accordance with the said section of the Tenancy Act, proceed of my own motion to settle fair and equitable rent for such tenant's holding.

No landlord or tenant shall be entitled to present an application for settlement of fair and equitable rents after the above-mentioned date. All applications should therefore be presented to me before the said date.

You are hereby required to attend before me at the above-mentioned time and place, and at any other time and place to which the proceedings may be adjourned,

and to produce such evidence, written or oral, as you may have to offer on the subject-matter of the proceedings.

Revenue-officer.

"17. The Revenue-officer may also, if he deem fit, take such additional measures, under Rule 1 of this Chapter, as may be desirable to procure the attendance at the place specified in the notice to be issued under the last preceding rule of the under-raiyats, raiyats, landlords, tenure-holders, and proprietors, or their authorised agents.

"18. The record of rights of tenure-holders and under-tenure-holders shall be, as far as may be practicable, prepared in the same way as the record of raiyats' rights, or in such other manner, not being inconsistent with these rules, as the Board of Revenue may direct. The record of rights of under-raiyats shall be, as far as may be practicable, prepared in the same way as the record of raiyats' rights, or in such other manner, not inconsistent with these rules, as the Board of Revenue may direct.

"19. The record of raiyats' rights shall be prepared in the following manner.

"20. On the date specified in the notice to be issued under Rule 16, or on any other date to which the proceedings may be adjourned, the entries which the amin has recorded in each tenant's khatian at the time of measurement shall be read out in presence of such of the interested parties as are in attendance. If the correctness of the entries recorded by the amin be disputed, the Revenue-officer shall settle the dispute by local enquiry or otherwise: provided that if the correctness of the measurement is called in question, and a fresh measurement demanded, the Revenue-officer may require the costs of the remeasurement to be deposited. If the remeasurement show the original measurement to have been inaccurate, the amount deposited shall be refunded to the objector.

"21. The Revenue-officer shall ascertain what raiyats claim the right to hold at fixed rates, explaining, as far as may be necessary, the provisions of the Act in this respect. If the right claimed is disputed by the landlord, the Revenue-officer shall call on the claimants for proof of such right.

"22. The Revenue-officer shall ascertain which of the raiyats are settled raiyats or occupancy-raiyats, as the case may be, and shall record them as such in column 14 of the khatian.

"23. The Revenue-officer shall ascertain what raiyats are non-occupancy, and to this end he shall be entitled to call upon the landlord or his agent to pro-

duce a statement showing the names of the raiyats alleged by him to be non-occupancy-raiyats. On production of such statement, the Revenue-officer shall explain to the raiyats whose names are entered in the statement, and who have not already been recorded as occupancy or settled raiyats, the nature of the presumption raised by section 20 (7). If after such explanation a raiyat admits himself to be a non-occupancy-raiyat, he shall be recorded as such. If he does not admit himself to be a non-occupancy-raiyat, the Revenue-officer shall call on the landlord to prove the allegation made by him in regard to such raiyat.

"24. Abwabs shall not be recorded with, nor entered as forming part of, the existing rent. Cesses which are authorized by law shall be recorded in column 12 (*b*).

"25. The Revenue-officer on the day fixed by the notice issued under Rule 16 shall, as far as may be convenient, first proceed to record rents under section 104, clause 1. When neither the landlord nor the tenant has applied to have a fair and equitable rent fixed, and when it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, the Revenue-officer shall summarily ascertain the tenant's present rent, and record it in column 12 of the *khatian*, as the rent payable in respect of the land held by the tenant.

"26. When all rents to which section 104, sub-section 1, is applicable have been recorded, as far as may be convenient, the Revenue-officer shall proceed to settle rents under sub-sections 2 and 3 of the same section. In settling rents, the existing rent being presumed under section 104 (sub-section 3) to be fair till the contrary is proved, if the landlord claims an enhancement, he will have to prove the grounds of and amount of enhancement; and if a raiyat claims a reduction, he will similarly have to prove the grounds of reduction. Provided that it shall be in the discretion of the Revenue-officer to admit an application made after the period fixed in Rule 16, if it be established to his satisfaction that the delay in making it was not due to any negligence or carelessness on the part of the applicant, and that, if it be not admitted, serious hardship or injustice would accrue to him. The order passed by the Revenue-officer on all such applications shall be final.

"27. If within the period fixed and notified under Rule 16 the landlord applies for the settlement of a fair rent, he shall be considered as plaintiff and the tenant as defendant, and the proceeding shall be dealt with as a suit under this Act. If within the same period the tenant applies for the settlement of a fair rent, he shall be considered as plaintiff and the landlord as defendant, and the proceeding shall be dealt with as a suit under this Act.

"28. If it appears that a tenant is holding land in excess of or less than that for which he is paying rent, and if within the period fixed and notified under Rule

16 of this Chapter neither landlord nor tenant applies for the settlement of a fair rent or if an application be not admitted under the proviso to Rule 26, the Revenue-officer shall, in accordance with the notice, proceed to fix a fair and equitable rent for the holding under section 104, sub-sections 2 and 3.

"29. When a fair and equitable rent has been fixed under the last two preceding rules, it shall be entered in column 13 of the *khatians* as the rent payable in respect of the holding.

"30. Where the estate or tenure belongs to or is managed by the Government or the Court of Wards, the procedure laid down in the preceding rules for recording or settling rents shall be followed, the Government or the manager of the estate or tenure respectively, as the case may be, being regarded as the landlord.

"31. With the consent of the Revenue-officer, any number of tenants occupying land under the same landlord, in the same village or estate, may make a joint application for the settlement of rents, or may be joined as defendants in the same proceeding on a similar application by the landlord : Provided that if at any time it shall appear to the Revenue-officer that the question between any two of the parties of whom one is so joined with others cannot conveniently be so jointly tried, he may order a separate trial to be held of that question or he may pass such other order, in accordance with the Civil Procedure Code, for the joint or separate disposal of the application as he may think fit.

"32. In proceedings under section 106, when a dispute arises before the final publication of the record regarding the correctness of an entry (not being an entry of rents settled under Chapter X) or as to the propriety of any omission, notice of the objection shall be served on all persons whose interests may, in the opinion of the Revenue-officer, be affected thereby and they shall be called upon to attend at such time and place as the Revenue-officer may fix for the disposal of the objection. If any person attends and contests the objection, the proceeding shall be dealt with as a suit between the parties under the Tenancy Act, in which the objector shall be plaintiff and the other parties defendants. If no person attends to contest the objection, the record may be amended accordingly, or the person who made the objection may, if the Revenue-officer thinks fit, be called upon to produce evidence in support of his objection, which may in that case be heard and decided as a suit *ex parte* under the Tenancy Act.

Publication of the Record of Rights.

"33. When the record of rights has been prepared in the manner described in Rules 20 to 32, the Revenue-officer shall cause a draft of the *khewat* and

khatian, or, when more convenient, of each separately, to be posted, for the period of one month, at the landlord's village office, if there be one, and, if there be none, then in the presence of not less than two persons, on some conspicuous place in the village, and shall receive and consider any objections which may be made to any entry therein during this period.

"34. When all applications for settling a fair rent have been disposed of, and all disputes of the nature mentioned in Rule 32 have been decided and all objections of the nature mentioned in Rule 33 have been considered by the Revenue-officer, he shall note in the *khewat* and the appropriate columns of the *khatian* in regard to each entry what entries have been, and what entries have not been, the subject of dispute. He shall then finally frame the record and cause it to be published by having it posted in the village office at which the rent is usually paid, or in some conspicuous place in the village.

Supply of Copies of the Record of Rights to parties interested.

"35. The Revenue-officer having completed the record, shall cause copies of it to be made, one of which will be made over to the proprietor of the village or, where there are more proprietors than one, to their common agent or common manager, as the case may be, one to the village patwari, if there be a patwari, one to the Collector or Sub-divisional Officer:

A copy of the khatian relating to his tenancy shall be given to every tenant under the signature and seal of the Revenue-officer.

Final Reports.

"36. The Local Government may, if it thinks fit, direct that a final report be written in English for each village and each local area under survey. The report for the village will show—

(*a*)—The number of tenants of each class.

(*b*)—The area and classification of the village lands according—(*a*) to survey and settlement; (*b*) to landlord's jamabandi, if known.

(*c*)—The rental according to settlement, and according to landlord's jamabandi, with explanation of increase or decrease, amount of Government revenue, and comparison of rent with revenue.

(*d*)—The rates of rent prevailing, with history of past enhancements.

(*e*)—Proximity to markets.

(*f*)—Facilities for irrigation.

(*g*)—Village customs, including customs as to payment of village officials.

(*h*)—Arrangements made for maintenance of records.

(*i*)—Other matters deserving of notice which have been excluded from the record of rights.

The report for the whole area under survey will contain the following particulars :—

I—General description of the tract.

II—Its fiscal history.

III—Statistical results.

IV—Comparison of condition of tract as regards rentals before and after survey.

V—Financial results, including approximate division of expenses under the heads—

(*a*)—Survey.

(*b*)—Record of rights.

(*c*)—Preparation and distribution of records.

These reports shall not form part of the Record of Rights."

Particulars to be recorded.

102. Where an order is made under the last foregoing section, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely :—

(*a*) the name of each tenant ;

(*b*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure ;

(*c*) the situation, quantity and boundaries of the land held by him ;

(*d*) the name of his landlord;

(*e*) the rent payable;

(*f*) the mode in which that rent has been fixed, whether by contract, by order of a Court, or otherwise;

(*g*) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;

(*h*) the special conditions and incidents, if any, of the tenancy.

This is new.

See the notifications and the rules under the preceding section.

Power for Revenue-officer to record particulars on application of proprietor or tenure-holder.

103. On the application of a proprietor or tenure-holder, and on his depositing or giving security for the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record the particulars specified in the last foregoing section with respect to the estate or tenure or any part thereof.

This section replaces section 10 of Act VI B. C. of 1862 and section 38 of Act VIII B. C. of 1869.

This section will be very useful, as pointed out in Council, to a new landlord who cannot ascertain the tenancies and rents in his estate or tenure. But any landlord may apply under this section, who desires to have a record of his tenants' rights and rents. A proprietor of an estate, however, who has not his name registered under Act VII B. C. of 1876, cannot apply under this section (Local Government Rules, No. 39, *infra*).

It is to be hoped that the expenses attendant on these records of rights and rents would not be prohibitive in amount. (*See* Rule 46, *infra*; 8 annas per acre will be deposited at first, the expenses may be more or less.)

This section applies in case of a collective body of tenants holding land within a specified area. In individual cases, section 158 applies and under that section the Civil Court may direct a local enquiry by a Revenue-officer nominated by the Collector.

The rules framed by the Local Government under this section are as follows :—

Applications by Proprietors for Survey and Record of Rights.

"37.* *Section* 103.—Applications under this section shall be made to the Collector of the district.

"38. The application shall specify—

(*a*) The status of the applicant, *viz.*, whether he is a proprietor or a tenure-holder, and the particulars in respect of which the application is made.

(*b*) The number of tenants (so far as the applicant is able to state it) occupying the estate or tenure, or part thereof in respect of which the application is made, the total rent payable by them at the time, and the estimated area covered by the application.

"39. If the application is made by a proprietor, it shall not be admitted unless the name of the applicant and the extent of his interest are registered under Act VII B. C. of 1876.

"40. On receipt of the application, the Collector shall forward it to the Commissioner with any remarks which he may think necessary.

"41. The Commissioner may call for further information, or may require the application to be amended.

"42. If the Commissioner shall have reason to believe that the number of tenants affected by the application does not exceed 1,000, and that the rent payable by them at the time the application is made does not exceed Rs. 25,000, he shall pass an order allowing or rejecting the application ; but otherwise he shall forward the application with an expression of his opinion for the orders of the Board of Revenue.

"43. A Commissioner rejecting an application shall record his reasons for doing so, and the applicant, if dissatisfied with the order, may appeal within one month to the Board of Revenue.

"44. When an application is referred to the Board under Rule 42, or in consequence of an appeal under Rule 43, the Board shall pass such orders as it may think fit for allowing or rejecting the application.

"45. The Commissioner or the Board, as the case may be, when allowing an

* This number and the following are in continuation of Rules printed under section 101.

application, shall specify the Revenue-officer or officers by whom the record is to be prepared.

"46. As soon as an application is allowed, the Collector shall call upon the applicant to deposit the expenses at the rate of eight annas per acre for the estimated area in respect of which the application has been allowed. If the Collector is unable to estimate the area, he shall calculate the expenses at the rate of Rs. 2 per each tenant. If the amount does not exceed Rs. 500, the applicant must deposit the whole amount in advance. If it exceeds Rs. 500, the applicant shall deposit the sum of Rs. 500, and shall give such security as the Collector may require for the balance. The applicant shall, when called upon, from time to time, deposit such further sum as may be necessary for carrying on the operations. On completion of the proceedings, any unexpended balance shall be refunded to the applicant.

"47. In conducting the operations, the Revenue-officer shall proceed in accordance with the rules for the guidance of officers acting under orders made under section 101."

Procedure as to recording or settling rents.

104. (1) When, in any proceeding under this chapter, it does not appear that the tenant is holding land in excess of or less than that for which he is paying rent, and neither the landlord nor the tenant applies for a settlement of rent, the officer shall record the rent payable by the tenant, and the land in respect of which the rent is payable.

(2) When it appears that a tenant is holding land in excess of, or less than, that for which he is paying rent, or either the landlord or the tenant applies for a settlement of rent, or in any case under section 101, sub-section (2), clause (*d*), the officer shall settle a fair and equitable rent in respect of the land held by the tenant.

(3) In settling rents under this section, the officer shall presume, until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this Act for the guidance of the Civil Court in increasing or reducing rents, as the case may be.

This is new.

The Revenue-officer has to *record* the rent that has been payable by the tenant, except in three classes of cases when he has to *settle* rents. These are—(1) when the tenant is holding land in excess of or less than that for which rent is paid; (2) when either the landlord or the tenant applies for settlement of rent; and (3) when a settlement of revenue is being made for the local area under section 101, sub-section 2, clause (*d*).

Land in excess of or less than what is paid for.—In ascertaining whether a tenant actually holds more or less land than what he pays for, the Revenue-officer shall be guided by the provisions of section 52, sub-section 2, which mentions certain matters to be taken into consideration in determining the area for which rent has been previously paid. These matters are—(1) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenancy; (2) whether an addition to rent was made for the additional land with the knowledge and consent of the landlord; (3) the length of time during which the tenancy has lasted without dispute as to rent or area; and (4) the length of the unit of measure in local use or actually used at the origin of the tenancy. (*See* text and notes, pp. 166 to 168, *ante*.)

Sub-section (3). Shall presume.—The presumption of this sub-section, unlike that in section 27, *ante*, arises both against the landlord and the tenant. Further, it arises in case of all classes of tenancies. It will be noted that the presumption now arises in land settlements, in khas mahals and in temporarily-settled estates.

Rules laid down in this Act, &c.—Rules for enhancement of rent in this Act are contained in sections 6, 7 and 8 for the permanent tenure-holders, in sections 30, 31, 32, 33, 34, 35 and 36 for the occupancy-raiyats, and in section 46 for non-occupancy-raiyats. Rules for reduction of rent are contained in section 38 for the occupancy-raiyats. Rules for the alteration of rent, for alteration of area are to be found in section 52, sub-sections (3) and (4): and rules and presumptions as to the fixity of rent in section 50. The presumptions of section 50 do not arise in temporarily-settled estates with regard to *tenures* (sec. 191).

Publication of record.

105. (1) 'When the Revenue-officer has completed a record made under this chapter, he shall cause a draft thereof to be locally published in the prescribed manner and for the prescribed period, and shall receive and consider any objection which may be made to any entry therein during the period of publication.

(2) After the expiration of this period the Revenue-officer shall finally frame the record, and shall cause it to be locally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this chapter.

This is new.

See Local Government Rules 33 and 34 under section 101, *ante*, pp. 275-76. The period prescribed under sub-section (1) is one month.

Procedure in case of dispute as to entries in record.

106. If at any time before the final publication of the record under the last foregoing section a dispute arises as to the correctness of any entry (not being an entry of a rent settled under this chapter), or as to the propriety of any omission, which the Revenue-officer proposes to make or has made therein or therefrom, the Revenue-officer shall hear and decide the dispute.

This is new.

See Local Government Rule 32 under section 101, *ante*, p. 275. An objection as to the correctness of an entry shall be dealt with as a suit under this Act in which the objector shall be plaintiff, and the other parties defendants. If it is not contested, it shall be decided as an *ex parte* suit. A contested entry is conclusive between the parties. From the analogy of the rulings regarding the binding force of an *ex parte* decree as to the rate of rent (*see* notes, *ante*, p. 146), it would appear that an *ex parte* decision of an objection to an entry is only relevant but not conclusive between the parties, and the entry is not a *disputed* one within the meaning of section 109, *post*. But if the *ex parte* decision is appealed against by the absent defendant, the entry becomes a *disputed* one. The word "dispute" in this section appears to have the same meaning as "objection."

Procedure to be adopted by Revenue-officer.

107. In all proceedings for the settlement of rents under this chapter, and in all proceedings under the last foregoing section, the Revenue-officer shall, subject to rules made by the Local Government under this Act, adopt the procedure laid down in the Code of Civil Procedure, XIV of 1882, for the trial of suits, and his decision in every such proceeding shall have the force of a decree.

This is new.

The decision having the force of a decree between the parties, and there being appeals (to the Special Judge and to the High Court), as in any other suit between the parties, the decision in a contested case will be *res judicata* and conclusive between the parties.

Appeals from decisions of Revenue-officers.

108. (1) The Local Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue-officers under this chapter.

(2) An appeal shall lie to the Special Judge from the decision of a Revenue-officer under this chapter, and the provisions of the Code of Civil Procedure XIV of 1882 relating to appeals shall, as nearly as may be, apply to all such appeals.

(3) Subject to the provisions of Chapter XLII of the Code of Civil Procedure XIV of 1882, an appeal shall lie to the High Court from the decision of a Special Judge in any case under section 106 as if he were a Court subordinate to the High Court within the meaning of the first section of that chapter:

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure or holding has been settled, the Court may settle a new rent for the tenure or holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained or settled under section 104.

This is new.

Sub-section (1).—The District Judge of Mozufferpore has been appointed to be the Special Judge for the purpose of hearing appeals from the decisions of the Revenue-officers employed in conducting the survey and record of rights in pergana Guddeswar and in Tuppehs Chukla Nye and Butsaleh in the district of Mozufferpore.

Sub-section (2).—An appeal lies only from a *decision* of the Revenue-officer; so that where there has been no decision but only an unobjected *record*, there can be no appeal. All proceedings to settle rents (sec. 107) and all orders in objections under section 106, are decisions.

Sub-section (3).—Chapter XLII of Civil Procedure Code provides that a second appeal shall lie to the High Court on the following grounds, namely, (1) the decision appealed against, being contrary to some specified law or usage having the force of law; (2) the decision having failed to determine some material issue of law or usage having the force of law; and (3) there being a substantial error or defect in the procedure, as prescribed by that code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits (sec. 584): and that no second appeal shall lie except on the above grounds (sec. 585).

Undisputed entries in record to be presumptive evidence.

109. (1) Every record made under this chapter shall distinguish between the disputed and the undisputed entries therein.

(2) Every undisputed entry in the record shall be presumed to be correct until the contrary is proved.

This is new.

Disputed entries.—This means entries about which *there was* a dispute or contest between the parties. When rent is *settled* either on account of an alteration of area of the tenancy or on the application of either the landlord or tenant, or because a settlement of revenue is being made, the rent settled may be disputed or not. It is only in contested cases of settlement of rents and of record of rent and rights that the entries on the contested points are conclusive between the parties. All other entries are only presumed to be correct till the contrary is shown.

The word "disputed" in this section, unlike the meaning of "dispute" in section 106, means "contested" and not merely "objected" by one party, if not contested by the other party.

Time at which settlement of rent is to take effect.

110. When any rent is settled under this chapter, the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record.

This is new.

Section 154 fixes the time from which a decree of the Civil Court for enhancement of rent shall take effect. But there is no rule in this Act fixing the time from which a decree of the Civil Court for reduction of rent or alteration of rent shall take effect. This section settles the point for all rents settled by the Revenue-officer. It is to be noted that the provisions of section 154 differ substantially from those of this section.

Stay of proceedings in Civil Court during preparation of record.

111. When an order has been made under section 101,—

(*a*) a Civil Court shall not, until the final publication of the record, entertain a suit or application for the alteration of the rent or the determination of the status of any tenant in the area to which the order applies; and

(*b*) the High Court may, if it thinks fit, transfer to the Revenue-officer any proceedings pending in a Civil Court for the alteration of any such rent or for the determination of any of the matters specified or referred to in section 102.

This is new.

Sub-section (1).—"Alteration of rent" in this sub-section includes enhancement of rent and reduction of rent, as well as alteration of rent for alteration of area. "Determination of the status" refers to the provisions of section 157, *post*. This sub-section prevents the same question being simultaneously investigated in two Courts of competent jurisdiction, which could not but produce complications.

Sub-section (2).—This sub-section applies to suits and applications for the above purposes, pending in Civil Courts at the time when an order under section 101 is made.

Power to authorize a special settlement in special cases.

112. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, invest a Revenue-officer acting under this chapter with the following powers or either of them, namely,—

(*a*) power to settle all rents;

(*b*) power, when settling rents, to reduce rents if in the opinion of the officer the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section may be made exerciseable within a specified area either generally or with reference to specified cases or classes of cases.

(3) When the Local Government takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor-General in Council.

This is new.

The Select Committee observed :—"Under the special settlement which will only be undertaken with the previous sanction of the Government of India, and which is meant to be applied only in circumstances in which the operation of the ordinary law is likely to prove insufficient, the Settlement-officer will have power to settle all rents, and will, moreover, have power to reduce rents on other grounds than those ordinarily applicable. We think that in the exceptional cases in which it may be necessary to have recourse to this procedure, the Government should have power to go to the root of the matter and to put its settlement on a thoroughly stable basis."

Period for which rents as settled are to remain unaltered.

113. When the rent of a tenure or holding is settled under this chapter, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy-holding for fifteen years, and, in the case of a non-occupancy-holding, if the rent is settled in any case under section 112 or on the application of the landlord under section 104, for five years. The periods of fifteen and five years shall be counted from the date of the final publication of the record.

This is new.

The difference of the provisions of this section and those of sections 9 and 37 should be noted. Under section 9, the restriction to enhancement of rent of a *permanent* tenure, is limited to only an enhancement by suit. Enhancement may be made under that section *by contract* within fifteen years of a previous enhancement. Under section 37, the restriction to enhancement of rent of an occupancy-holding is limited only to the first and the second ground of enhancement of section 30. Under this section the restriction applies also to the fourth ground. The

provisions of this section are like those of section 29 and section 46 in matters provided for by them.

This section uses the general word "tenure." It would thus appear that if the rent of a non-permanent tenure be settled under this chapter, such rent shall not be altered within fifteen years except for alteration in the area.

Expenses of proceeding under chapter.

114. Where an order is made under this chapter in any case except under section 101, sub-section (2), clause (*d*), the expenses incurred by the Government in carrying out the provisions of this chapter in any local area, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area, in such proportions as the Local Government, having regard to all the circumstances of each case, may determine; and the proportion of those expenses so to be defrayed by any person shall be recoverable by the Government from him as if it were an arrear of revenue due by him.

This is new.

The Local Government has yet made no order, regarding the proportion of the expenses to be borne by the landlords and the tenants in the survey and record-of-rights that have been ordered in the districts of Mozufferpore and Noakhali. The Local Government has the discretion of ordering that only a part of the expenses shall be borne by the landlords and tenants. When a revenue settlement is being made, the inferior landlords and tenants shall not have to defray any expenses.

As if it were an arrear of revenue.—The money shall be recovered under the Certificate Procedure of Act VII B. C. of 1868 and Act VII B. C. of 1880.

Presumption as to fixity of rent not to apply where record has been prepared.

115. When the particulars mentioned in section 102, clause (*b*), have been recorded under this chapter in respect of any tenancy, the presumption under section 50 shall not thereafter apply to that tenancy.

This is new.

The presumption referred to is, that on proof that the rent of tenure-holder or a raiyat has not varied for the last twenty years, it shall be presumed that rent has not varied since the time of the Permanent Settlement.

CHAPTER XI.

RECORD OF PROPRIETORS' PRIVATE LANDS.

ONE of the distinctions deeply engrained in the mind of the agricultural population of Bengal is, that between that portion of the land which is recognized, as being in a special and exclusive sense, the private property of the zemindar and all the rest of the cultivated or cultivable area, which may be called the raiyati or communal land, and in respect of which the zemindar's rights are merely to receive a share of the produce or its equivalent in money. Raiyats occupying land of the latter class enjoy under this Act, as they did under the previous Acts, a much larger measure of protection than those occupying land of the former class. For this reason and having regard to the efforts made by landlords in some parts of the country to get into their own hands as much of the raiyati land as possible and convert it into khamar land, it has been provided that the existing stock of khamar land cannot hereafter be increased, and that all land shall be presumed to be raiyati land until the contrary is proved (sec. 20). In Behar owing to the large extent of the khamar, or, as it is there termed "zirat" land, and the persistent efforts made by the landlords and their lessees to increase its extent, the question is of cardinal importance. Accordingly, it has been provided that the Local Government may direct a survey and record of all khamar lands in a specified local area (sec. 117).

It should be noted that it is only *proprietors* (i.e., owners of revenue-paying or revenue-free *estates*) that can have any private lands. When the estate is sold, the private lands pass on to the purchaser, and the ex-proprietor has no right to retain these lands (*Jay Datt Jha* v. *Bayiram Sing*, 7 W. R. 40). A proprietor can have no right of occupancy in his private lands (*Reed* v. *Srikrishna Sing*, 15 W. R. 430; section 5, sub-section (3) of this Act).

No landlord subordinate to a proprietor can have any private lands of his own. But if private lands of the proprietor is included within his tenure, raiyats holding under him would seem to be as restricted in their rights as when holding under the proprietor directly.

Saving as to khamar land.

116. Nothing in Chapter V shall confer a right of occupancy in, and nothing in Chapter VI shall apply to, a proprietor's private lands known in Bengal as khamar, nij or nij-jote, and in Behar as zirat, nij, sir or kamat, where any such land is held under a lease for a term of years or under a lease from year to year.

Old Acts.—Section 6 of Act X of 1859; section 6 of Act VIII B. C. of 1869.

Nothing in Chapter V, &c.—Under the old Acts, a right of occupancy could be acquired in khamar land if such land was held otherwise than under lease for a term of years, or under lease from year to year (*Gourhari Sing* v. *Behari Rahut*, 3 Beng. App. 138, 12 W. R. 278; *Bhagabun Bhagut* v. *Jagamohan Roy*, 20 W. R. 308; *Sheikh Ashraf* v. *Ram Kisore Ghosh*, 23 W. R. 288). The law remains the same under this Act. It will be noted that the restriction is only about conferring a right of occupancy. There is no restriction as to conferring the status of a settled raiyat. So that, when a raiyat has held khamar land for twelve years, he acquires at once a right of occupancy in any raiyati land of the same village that is let to him.

Nothing in Chapter VI, &c.—The rent of khamar lands may be enhanced by an unregistered agreement. If the raiyat does not agree to the rent demanded, or if the proprietor on any other ground so desires, he may eject the raiyat from khamar land after giving reasonable notice. But the ejectment must be in execution of a decree (sec. 89). If, however, without trying to eject the raiyat, a landlord sues for enhancement of rent of khamar land, it would appear, he can only have a fair enhancement. (Cf. *Backranath Mandal* v. *Binodram Sen*, 1 Beng. F. B. 25). On the other hand, if the landlord serves a notice of enhancement or surrender in the alternative, and the raiyat continues to hold on without objection, he must be taken to have agreed by implication to the enhanced rent demanded (*Janu Mandar* v. *Braja Sing*, 22 W. R. 548). A raiyat of khamar land may be ejected for arrears of rent due at the end of Chyet, Bengali year, or Jyet, Fasli or Amli year (sec. 66). And when he is ejected, he may claim compensation under section 82.

Power for Government to order survey and record of proprietors' private lands.

117. The Local Government may, from time to time, make an order directing a Revenue-officer to make a survey and record of all the lands in a specified local area which are a proprietors' private lands within the meaning of the last foregoing section.

This is new.

With reference to this and the following section, the Select Committee reported :—

"In dealing with the difficult question of khamar or zirat land, we have provided two alternative methods of procedure—

(a) that of survey and registration of such land by a Revenue-officer, by order of the Local Government;

(*b*) that of enquiry on the application of the individual landlord or tenant concerned.

"The former procedure would apply to large areas where the question is important, the latter to disputes about particular plots of land. At the request of the Government of Bengal, the two methods of procedure have been left equally applicable to any part of the country. We have made no distinction in the description of this land between Bengal and Behar, but we have directed regard to be had in every case to local custom, and, while making it incumbent on the Revenue-officer to record certain lands as the proprietor's private lands, have endeavoured to assist him by certain guiding rules in cases not clearly coming under these heads."

Under the powers vested in it by section 189, *post*, the Local Government has conferred on Revenue-officers when directed to make a survey and record of proprietors' private lands, all powers exercised by the Civil Court in the trial of suits and the power to enter upon any land, and to survey, demarcate, and make a map of the same and any power exercisable by any officer under the Bengal Survey Act, 1875. (*See* Rule 1 under sec. 101, *ante*.)

The Local Government has, however, not yet directed any survey and record of proprietors' private lands in any local area. When the Local Government directs any such survey and record, the Revenue-officer appointed to make the survey and the record, shall be guided by the rules printed under section 101, so far as they may be applicable.

Power for Revenue-officer to record private land on application of proprietor or tenant.

118. In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may, subject to and in accordance with rules made in this behalf by the Local Government, ascertain and record whether the land is or is not a proprietor's private land.

This is new.

The provisions of the section are intended not only to settle disputes that may arise between a proprietor and his tenant, but also to allow a proprietor to preserve evidence which may be lost, in case a general survey and record is not directed by the Local Government for the local area for any length of time.

The Local Government has framed the following rules under this section :—

"1. Applications under this section may be made to the Collector of the district, or to the officer in charge of the sub-division in which the land in ques-

tion is situated, or to any Assistant or Deputy Collector especially empowered by Government to receive such applications. If the application is made to the Collector of the district, he may transfer it for disposal to any officer empowered by Government to receive it.

"2. The application shall be signed by the party making it, and shall contain the following particulars so far as the applicant is able to furnish them :—

(*a*) The name, towji number, and Government revenue of the estate.

(*b*) The names of the registered proprietors, and the share held by each.

(*c*) The specificaton of each plot of land referred to in the application, showing the village in which it is situated and the area and boundaries of each plot, if known.

(*d*) The names of the tenants (if any) in occupation of each such plot.

(*e*) Grounds of the application.

"3. On receipt of the application the officer shall make such inquiry as he may think fit by examining the applicant or his agent, and may call for further particulars before ordering further proceedings.

"4. If the area of the lands has not been already ascertained by measurement made by competent agency under the authority of Government, or if for sufficient reason a further measurement is considered desirable, the officer shall order the lands to be measured and shall estimate the cost of measurement in accordance with the rules for the time being in force for the measurement of lands in partition cases, and shall require the applicant to deposit the amount either at once or in such instalments as he may deem fit."

Procedure for recording private land.

119. When a Revenue-officer proceeds under either of the two last foregoing sections, the provisions of sections 105 to 109, both inclusive, shall apply.

This is new.

The provisions of sections 105 to 109 relate to the publication of the draft and the final record (105), the procedure in case of dispute as to entries in the draft record (106), the application of the Civil Procedure Code to the proceedings of the Revenue-officer (107), appeals from the decision of the Revenue-officer (108), and the presumption of correctness in favor of undisputed entries (109). Contested entries shall thus be conclusive between the proprietor and the raiyat, and if any party be aggrieved, he may appeal first to the Special Judge, and next, if such an appeal lies, to the High Court. Uncontested entries shall be presumed correct till the contrary is proved.

Rules for determination of proprietor's private land.

120. (1) The Revenue-officer shall record as a proprietor's private land,—

(*a*) land which is proved to have been cultivated as khamar, zirat, sir, nij, nij-jote or kamat by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the passing of this Act, and

(*b*) cultivated land which is recognized by village usage as proprietor's khamar, zirat, sir, nij, nij-jote or kamat.

This is new.

Clause (a).—This clause converts all land cultivated by proprietors as *khamar*, from the 14th March, 1873, or earlier, into the proprietor's private land; that is to say, the land might have been raiyati or khamar, but if it has been treated as khamar and cultivated, from the time mentioned, by the proprietor, it is converted into khamar land. This adds very considerably to the stock of proprietors' private lands, especially in case of small proprietors, like those of Mymensing and Chittagong, who cultivate their own lands. At the Permanent Settlement only such khamar lands were recognized, though for a different purpose, as existed previous to the 12th August, 1765, the date of the grant of the Dewani to the East India Company (sec. 39 of Reg. VIII of 1793).

It will be noted that two things are necessary under this clause to give land the character of khamar land: (1) the land must have been held as khamar for twelve years before the passing of this Act; and (2) it must have been cultivated by the proprietor during that period.

Hired labour.—Where A's land is cultivated by B, who supplies the labour, A supplying the seed, and the crop is divided between the parties, it will depend on the circumstance of each case and the conditions of the contract, express or implied, between A and B, whether B is a hired labourer or A's tenant.

Clause (b).—Under clause (*b*), any cultivated land which is recognized by village usage to be khamar shall be so recorded, irrespective of the person who may carry on the cultivation. Thus, khamar land recognized as such by village usage and held by a raiyat who has been allowed to acquire occupancy-right in it, shall be recorded as *khamar*.

This clause applies only to cases of cultivated land. Land does not cease to be cultivated land under this clause by remaining fallow for some years. The word

"cultivated" has been used in opposition to "waste" land. Waste land may hereafter be khamar only by force of local custom under the next sub-section.

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the officer shall have regard to local custom, and to the question whether the land was before the second day of March, 1883, specifically let as proprietor's private land, and to any other evidence that may be produced; but shall presume that land is not a proprietor's private land until the contrary is shown.

(3) If any question arises in a Civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down in this section for the guidance of Revenue-officers.

These sub-sections are new.

Under sub-section (2), land not falling within the purview of clauses (*a*) and (*b*) of sub-section (1), may be recorded as khamar in case (1) where the land, though not cultivated, is yet regarded by local custom as khamar, and (2) when, though local custom does not recognize the land as khamar, yet the land has been leased specifically as private land in past years. But till these facts are made out, the land shall be presumed to be raiyati or communal land.

The 2nd March, 1883, was the day in which leave was obtained to introduce the Bengal Tenancy Bill into Council. A proprietor cannot, by specifically calling land khamar after that date, convert raiyati land into khamar.

Sub-section (3) provides that the same rules, which guide a Revenue-officer in deciding whether a particular land is khamar or raiyati, shall also guide the Civil Court in deciding the same question.

CHAPTER XII.

DISTRAINT.

BY Act XX of 1885, the operation of this Chapter was postponed till the 1st of February, 1886; and the law of distraint, as under the old Acts, remained in force till that date. The text of Act XX will be found at page 182, *ante*. The postponement was necessary, as rules under this Act could not be framed before its commencement; and under section 190, *post*, such rules had to be published in the

Gazette, at least one month before they were finally considered. It was apprehended that inconvenience might be felt, if the provisions of the old Acts relating to distraint were repealed and the new provisions were in force without the rules by which it was intended to supplement them. The rules proposed by the High Court will be found under the respective sections.

The Rent Commission proposed to abolish the law of distraint. They remarked :—"This offset of English law was originally introduced into this country by Regulation XVII of 1793, which empowered certain specified landlords to distrain and sell the crops and products of the earth of every description, the grain, cattle, and all other personal property (whether found in the house or on the premises of the defaulter or of any other person) belonging to their tenants. This continued to be the law until 1859, when the power of destraint was limited to the produce of the land on account of which the rent is due. There can be little doubt that this change considerably impaired the coercive efficacy of this procedure as a means of recovering rent; and we are afraid that the provisions of the present law are not always strictly attended to. There is evidence of positive abuse of these provisions in Behar; and the experience of some of us is, that they have not always been used in a regular manner in other parts of the country." The Rent Commission followed the majority of the Behar Rent Committee in proposing the abolition of the law of distraint. But the proposal met with strong objections and the procedure enacted by this Chapter was devised, by way of compromise, by the Bengal Government as being likely to secure to the landlords all the advantages afforded by the previous law, without exposing their tenants to the evils complained of thereunder.

The modified power of distraint, under this Act, can be used by any landlord of a raiyat or under-raiyat for the recovery of an arrear of rent, which has not been due for more than a year. It extends, as a rule, to all the produce of the holding, including what may have been grown by, and be the property of, a sub-lessee of the tenant, unless the landlord had consented in writing to the sub-letting; but it may not be exercised when the produce has been stored. The landlord cannot himself interfere with the produce to be distrained, but must apply to a Civil Court to distrain it. The Court, after a brief examination of the case, will depute an officer to distrain and sell the produce, and nothing will stay the sale except the payment of the amount of the demand. The sum so paid will be retained for one month with a view to the possibility of the owner of the distrained property claiming compensation for a wrongful distraint, and on the expiration of that period, it will be paid to the landlord. But though distraint will thus generally be by application to a Court and under its order, provision is made for ex-

ceptional circumstances where by reason of the character of the cultivation or the habits of the cultivator, it may be impracticable for the landlord to proceed by application. In such cases the Local Government may by order authorize the landlord to distrain by himself or his agent. But a landlord so distraining shall forthwith give notice to the Court, and it shall thereupon depute an officer to take charge of the produce and proceed as if the distraint was made under its order.

Along with this Chapter, should be read section 186, *post*, which provides that if any person, otherwise than in accordance with this Act or some other enactment for the time being in force, distrains or attempts to distrain the produce of a tenant's holding, or resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code: and any person who abets any such act, shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

Cases in which an application for distraint may be made.

121. Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefor by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, present an application to the Civil Court requesting the Court to recover the arrear by distraining, while in the possession of the cultivator,—

(*a*) any crops or other products of the earth standing or ungathered on the holding;

(*b*) any crops or other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding, or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead:

Provided that an application shall not be made under this section—

(1) by a proprietor or manager as defined under the Land Registration Act VII B. C. of 1876, or a mortgagee of such a proprietor or manager, unless his name and

the extent of his interest in the land in respect of which the arrear is due have been registered under the provisions of that Act; or

(2) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or

(3) in respect of the produce of any part of the holding which the tenant has sublet with the written consent of the landlord.

Old Acts.—Sections 112, 113 and 115 of Act X of 1859; sections 68, 69 and 71 of Act VIII B. C. of 1869, and section 78 of Act VII B. C. of 1876. Proviso, clause (3) is new.

The landlord may present an application.—Under the old Acts, the power of distraint could be exercised "by naibs, gomashtas, and other agents employed in the collection of rent, if expressly authorized by power of attorney in that behalf" (sec. 114 of Act X of 1859; sec. 70 of Act VIII B. C. of 1869). Under the present Act, the application for distraint "may, *unless the Court otherwise directs*, be made by an agent empowered in this behalf by a written authority under the hand of the landlord" (sec. 187).

Under the old Acts, no sharer in a joint estate, dependent talook, or other tenure in which a division of land has not been made amongst the sharers, could exercise the power of distraint otherwise than through a manager authorised to collect the rents of the whole estate, talook, or tenure, on behalf of all the sharers in the same (sec. 112 of Act X of 1859; sec. 68 of Act VIII B. C. of 1869). Under the present Act, where two or more persons are joint landlords, anything which the landlord is under this Act authorized to do, must be done either by *both or all those persons acting together*, or by an agent authorized to act on behalf of both or all of them (sec. 188). The law thus remains the same.

Holding.—This word in this section undoubtedly includes an under-raiyat's tenancy. The word has the same wider sense in section 52, and probably in section 89.

While in possession of the cultivator.—The word "cultivator" means the person who is in physical possession of the land, and holds it either immediately or mediately under the landlord. But the word does not include a person who is in possession and has cultivated the land, but who claims to hold it against the landlord or against the admitted tenant of the landlord. So, in *Mohini Dasi* v. *Ram Kumar Karmakar*, W. R. Sp. X. 77, it was held that the landlord had no right of distraining crops which was in the possession of, and had been grown by, a person other than the person whom he chose to set up as his tenant.

Any crops or other products of the earth.—In *Sheoprasad Tewari* v. *Massamat Molima Bibi*, 1 All. pt. iii, 7, it was remarked:—"We have considered the sections of Act X of 1859 by virtue of which the right of distress is now exercised in these provinces, and, having regard to the whole of those sections, we are of opinion that the term 'produce of land' is to be construed as equivalent to that which can be gathered and stored, crops of the nature of cereal, or grass or fruit-crops, and it does not apply to the trees from which the crops, if fruit-crops, are gathered. The law of distress in Act X of 1859 is substantially a re-enactment of the law of distress provided by Regulations XVII of 1793, and XXXV and XLV of 1795, and that again has evidently been adopted from the English Statute Law. Now by Statute Geo. II, c. 19, s. 8, landlords are empowered to distrain corn, grass, or other product growing upon any part of the land demised, and it has been held that the term *product* in the section above quoted applied to such products only as are similar to those specified, to all of which the process of becoming ripe, and of being cut, gathered, made, and laid up when ripe, is incidental. Hence trees, shrubs, and plants growing in nursery ground cannot be distrained for rent—Selwyn's N. P., p. 669. The provisions of Act X appear to us also to refer only to such produce of the land as becomes ripe and is cut, gathered, and stored."

Extent of interest.—These words in clause (1) of the proviso are rather misleading. Ordinarily these words would include both a fractional share and a specified portion of the whole interest. But in this clause they are to be understood as not to include a fractional share of the whole interest, but to mean only a specified portion. For, if the words are understood in the wider sense, clause (1) might imply that a part-proprietor of a joint undivided estate has a right to obtain a distraint. But the crop or product of the *holding* has to be distrained, and 'holding' means 'a parcel or parcels of land' (sec. 3, cl. 9), and not any undivided part of such parcel or parcels of land. And it is not possible to argue that the Legislature wanted to give a part-proprietor a right, which he never had, to distrain the crop of the whole land, to the positive injury of the rights of the other part-proprietors.

Written contract.—In case of an occupancy or a non-occupancy-raiyat,

the "written contract" of clause (2) of the proviso should also be a registered one (secs. 29 and 43). In case of an under-raiyat or a raiyat of proprietor's private lands the written contract may or may not be registered. But under an unregistered lease, more than 25 per cent. over and above the head-rent cannot be recovered from the under-raiyat (sec. 48).

Proceeding.—This word in clause (2) of the proviso includes a suit for enhancement of rent of an occupancy-raiyat, a suit under section 46 against a non-occupancy-raiyat in which a fair enhanced rent is settled by the Court, a suit for increase of rent for increase of area, and a proceeding before a Revenue-officer when he settles rent under the provisions of Chapter X.

Sub-lease.—Under the old law it was held that when the tenant had sublet the land, the crops of the sub-tenant was subject to distraint for rent due from the tenant (*Geetum Sing* v. *Baldev Kahar*, 4 All. 76). Under clause (3) of the proviso, the crop of the sub-tenant is liable to distraint, except when the landlord consented *in writing* to the sub-lease.

122. (1) Every application under the last foregoing section shall specify—

Form of application.

(*a*) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;

(*b*) the name of the tenant;

(*c*) the period in respect of which the arrear is claimed;

(*d*) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract, or proceeding, as the case may be, under which that amount is payable;

(*e*) the nature and approximate value of the produce to be distrained;

(*f*) the place where it is to be found, or such other particulars as may suffice for its identification; and

(*g*) if it is standing or ungathered, the time at which it is likely to be cut or gathered.

(2) The application shall be signed and verified in the manner prescribed by the Code of Civil Procedure XIV of 1882 for the signing and verification of plaints.

This is new.

Sub-section (1).—It appears that the area of the holding shall have to be specified in the application under clause (*a*). If the land be in the possession of a person other than the tenant named under clause (*b*) and not claiming through the latter but against him, the landlord has no right of distraint (*Mohini Dasi* v. *Ram Kumar Karmakar*, W. R. Sp. X. 77).

Sub-section (2).—For the signature and verification of plaints, the Civil Procedure Code provides :—

Section 51.—"The plaint shall be signed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case : Provided that, if the plaintiff, by reason of absence or for other good cause, is unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf."

Section 52.—"The verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters he believes it to be true. The verification shall be signed by the person making it."

Stamp.—The Court-fee stamp on an application for distraint will be of 8 annas under Schedule II, art. 1, cl. (*b*), para. 2 of the Court Fees Act VII of 1870.

Procedure on receipt of application.

123. (1) The applicant shall, at the time of filing an application under the foregoing sections, file in Court such documentary evidence (if any) as he may consider necessary for the purposes of the application.

(2) The Court may, if it thinks fit, examine the applicant, and shall, with as little delay as possible, admit the application or reject it, or permit the applicant to furnish additional evidence in support of it.

(3) When a Court cannot forthwith admit or reject an application under sub-section (2), it may, if it thinks fit, make an order prohibiting the removal of the produce specified in the application pending the execution of an order for distraining the same or the rejection of the application.

(4) When an order for distraining any produce is made under this section at a considerable time before the produce is likely to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, if it thinks fit, make a further order prohibiting the removal of the produce pending the execution of the order for distraint.

This is new.

It is to be noted that, though distraint will be by application, the application is to be heard *ex parte*, without giving notice to the tenant, even if there be time to do so.

A distraint under this Act is thus more than an *interim* injunction. For, though an *interim* injunction may be heard *ex parte*, it is granted only till the defendant appears and shows cause, when the injunction may be withdrawn. An order for distraint, on the other hand, is final against which no cause may be shown and it cannot be withdrawn unless the arrear, for which the order of distraint has been obtained, is paid up.

The High Court have proposed the following rules regulating the procedure of this section :—

"5.* All applications to distrain shall be presented and heard in open Court. The examination mentioned in section 123, sub-section (2), shall be on oath or affirmation.

"6. All such applications and all notices of distraint under section 141 shall be entered in a register to be called the 'Distraint Register,' which shall be kept in the form annexed.† A copy of every such application, to be furnished by the applicant, shall be given to the officer appointed to make the distraint, and a copy of the notice under section 141, to be similarly furnished by the applicant, shall be given to the officer placed in charge of the distrained property."

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* High Court Rules 1 to 4 refer to the power of managers, and have been given under section 100, *ante*.

† *See* next page.

FORM OF DISTRAINT REGISTER PRESCRIBED BY RULE 6.

SERIAL NO. OF											AMOUNT REALISED BY SALE.				AMOUNT (IF ANY) DEPOSITED UNDER SECTION 136.		
Application under sec. 121.	Notice under section 141.	Date of application to distrain, or of notice of distraint, under section 141.	Name and address of the applicant under section 121, or of the person giving notice under section 141.	Name and address of the defaulter.	Amount of arrear claimed and period in respect of which it is claimed.	Purport of the order passed, and date on which it is passed.	Name of the officer deputed to distrain, or to take charge of property distrained.	Date of distraint.	Date of sale proclamation.	Date of sale.	Arrear.	Costs.	Surplus.	Total.	Arrear.	Costs.	REMARKS.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18

The High Court have not yet prescribed any form of the prohibitory order under this section, nor the mode of its service on the tenant. The prohibitory order will be something like the following :—

Prohibitory order under section 123, Bengal Tenancy Act.

In the Court of at

Application No. of 18 .

A. B. of , Landlord,

against

C. D. of , Tenant.

To , Tenant.

It is ordered that you the said be, and you are hereby, prohibited and restrained, until the further order of this Court, [*or*, pending the order for execution of the distraint,] from removing the crop or product specified in the Schedule hereunto annexed, and that all persons be, and that they are hereby, prohibited from removing the same.

Given under my hand and seal of the Court this day of 18 .

SCHEDULE.

L. S.

Judge.

Till the mode of service has been prescribed, the Court may direct that the order be served on the tenant as a summons on a defendant, and a copy be fixed up in a conspicuous place of the holding or other place in which the produce is to be found.

The evidence under this section will include—(1) evidence regarding the relation that exists between the applicant and the actual cultivator of the land, of which the crops or products are to be distrained (such cultivator must be shown to hold the land either immediately or mediately under the landlord); (2) evidence regarding the amount of arrears due for the holding in which such land is included. Where the crops or the products to be distrained are not standing on the land, evidence must also be given that they were grown in some land of the holding.

124. If an application is admitted under the last foregoing section, the Court shall depute an officer to distrain the produce specified therein, or such portion of that produce as it thinks fit; and the officer shall proceed to the place where the produce is, and distrain the produce by taking charge of it himself or placing some other person in charge of it in his behalf, and publishing a notification of the distraint in accordance with rules to that effect to be made by the High Court:

Execution of order for distraint.

Provided that produce which from its nature does not admit of being stored shall not be distrained under this section at any time less than twenty days before the time when it would be fit for reaping or gathering.

This is new, except the proviso which replaces the last portion of section 118 of Act X of 1859 and section 74 of Act VIII B. C. of 1869.

Under Rule 6, p. 300, *ante*, the officer appointed shall be furnished with a copy of the application.

As to the qualifications of the officer to be appointed, the High Court have proposed the following rule :—

"7. The officer deputed to make a distraint under section 124, or to take charge of produce distrained under section 141, must, in all cases, be able to read and write the language of the district."

For publishing the notification of distraint, the High Court have proposed the following rules :—

"9. The notification of distraint directed in section 124, Act VIII, 1885, shall be published—

By fixing up in a conspicuous part of the holding, or other place in which the produce is, a notice that such produce has been distrained, and by proclaiming at the same time the contents of the notice by beat of drum.

"10. The notice shall specify the name of the person at whose instance the distraint is made, the name of the defaulter, the name of the person in whose charge the produce has been placed, and the amount of the arrear due; and it shall direct any person intending to reap, gather, or store the crop or produce, if unreaped or ungathered, or intending to do any other act necessary for its preservation, to give due notice of his intention to the person who has been placed in charge.

"11. The notice shall be fixed up in the presence of not less than two persons, in addition to the agent of the distrainer, who points out the crop or produce."

The High Court have proposed the following procedure for officers deputed to distrain.

"17. All officers deputed to distrain property under this Chapter shall, if there is a post-office in the vicinity, report to the Court by letter immediately the distraint is made, or if there is no such post-office, shall, immediately on his return, report in writing the nature and extent of the crop or produce distrained, the day on which the distraint was made, the name of the person (if any) placed in charge of the crop, and the day fixed for the sale, or if the sale has taken place, the day on which it took place. He shall also, immediately on his return, file an account of all money received and disbursed by him, together with the receipts for the same and the record of the biddings at the sale, if a sale has taken place."

Service of demand and account.

125. (1) The distraining officer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due, and the costs incurred in making the distraint, with an account exhibiting the grounds on which the distraint is made.

(2) Where the distraining officer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and account on that person likewise.

(3) The demand and account shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the officer shall affix copies of the demand and account on a conspicuous part of the outside of the house in which he usually resides.

Old Acts.—Section 116 of Act X of 1859; section 72 of Act VIII B. C. of 1869. Sub-section (2) is new.

The High Court have proposed the following rule under this section :—

"8. The written demand under section 125 shall be framed in accordance with

the entries contained in the application or notice referred to in Rule 6" (*i. e.*, notice of distraint under section 141, *post.*

It will be noted that, under the present Act, the demand does not precede the distraint, as it did under the old Acts, but is simultaneous with it.

Right to reap, &c., produce.

126. (1) A distraint under this chapter shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

(2) If the person entitled to do so fails to do so at the proper time, the distraining officer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighbourhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case the distrained property shall remain in the charge of the distraining officer, or of some other person appointed by him in this behalf.

Old Acts.—Section 118 of Act X of 1859; section 74 of Act VIII B. C. of 1869.

When the owner of the crop intends to reap, gather or store the produce and to do any act necessary for its preservation, he shall, under rule 10 proposed by the High Court, (*q. v.* under section 124,) give notice of his intention to the person who has been placed in charge of it.

The High Court have proposed the following rule under sub-section (2) :—

"12. In the event of it being necessary for the distraining officer, or the officer placed in charge of distrained property, to reap, gather or store any crops or produce, or to do any other acts for the due preservation of the same, as provided by section 126, the person at whose instance the distraint was made shall advance the funds necessary to this end."

For the charge to be made on the landlord under this rule, *see* Local Government rule under section 134. The rule prescribes a charge of four annas for each man employed and the actual hire of threshing-floor or store-house, if necessary.

127. (1) Unless the demand, with all costs of the distraint, be immediately satisfied, the distraining officer shall issue a proclamation specifying the particulars of the property distrained and the demand for which it is distrained, and notifying that he will, at a place and on a day specified, not being less than three or more than seven days after the time of making the distraint, sell the distrained property by public auction:

Sale proclamation to be issued unless demand is satisfied.

Provided that when the crops or products distrained from their nature admit of being stored but have not yet been stored, the day of the sale shall be so fixed as to admit of their being made ready for storing before its arrival.

(2) The proclamation shall be stuck up on a conspicuous place in the village in which the land is situate for which the arrears of rent are claimed.

This is new.

The demand referred to a sub-section (1) is what is served under section 125 on the defaulter and the owner, if other than the defaulter, of the distrained property.

128. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the distraining officer is of opinion that it is likely to sell there to better advantage.

Place of sale.

Old Acts.—The first portion of section 129 of Act X of 1859; the same of section 86 of Act VIII B. C. of 1869.

'*The nearest place of public resort*' includes the nearest hât, bazar or ganj.

129. (1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for storing.

When produce may be sold standing.

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered,

and the purchaser shall be entitled to enter on the land by himself, or by any person appointed by him in this behalf, and do all that is necessary for the purpose of tending and reaping or gathering them.

This is new.

Manner of sale.

130. The property shall be sold by public auction, in one or more lots as the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

Old Acts.—Last portion of section 129 of Act X of 1859; the same of section 86 of Act VIII B. C. of 1869.

Postponement of sale.

131. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person authorised to act in his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

Old Acts.—Section 130 of Act X of 1859; section 87 of Act VIII B. C. of 1869.

The High Court have proposed the following rule under this section:—

"13. The officer holding a sale under section 131 shall record a description of the property offered for sale, the names of all persons bidding for the same, and the amount bid by each; and if the sale is postponed, he shall record an order to this effect, and shall then and there notify the place where and the time when the sale will be held."

Payment of purchase-money.

132. The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

Old Acts.—First portion of section 131 of 1859; the same of section 88 of Act VIII B. C. of 1869.

Certificate to be given to purchaser.

133. When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Old Acts.—Last portion of section 131 of 1859; the same of section 88 of Act VIII B. C. of 1869.

Proceeds of sale how to be applied.

134. (1) From the proceeds of every sale of distrained property under this chapter, the officer holding the sale shall pay the costs of the distraint and sale, calculated on a scale of charges prescribed by rules to be made, from time to time, by the Local Government in this behalf.

(2) The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

Old Acts.—Section 132 of Act X of 1859; section 89 of Act VIII B. C. of 1869.

Under the old Acts, the costs of sale were to be calculated at one anna in the rupee of the sale proceeds. The Local Government has prescribed the following scale of charges under this Act:—

"*Section* 134.—*For distraint of crops.*—The following scale of charges is prescribed on account of processes for distraint and sale under the Bengal Tenancy Act:—

(*a*) In respect of the warrant of distraint—8 annas.

(*b*) In respect of each man necessary to effect the distraint and also to ensure safe custody, where such man is to be left in actual possession—4 annas a day.

(*c*) In respect of action taken under section 126 (clause 2) for the reaping, storing, or the preservation of the crop distrained—4 annas a day for every person employed, and in addition actual hire of threshing-floor or store-house, if necessary.

"In addition to the charges under clauses (*a*), (*b*) and (*c*) above railway-fare, boat-hire, and ferry-charges will be levied when necessary as under Rule 3 of this chapter" (*i. e.*, Rule 3 printed under section 17, p. 59, *ante*, *q. v.*).

The High Court have proposed the following rules for regulating the procedure under this section :—

"14. When the sale is concluded and the sale proceeds are realized, the officer who held the sale shall, after paying the costs of the distraint and sale as directed in section 134, forthwith pay the balance into Court."

"15. The officer holding the sale shall take separate receipts for all sums paid by him as costs of the distraint and sale under section 134, sub-section (1), and if the person giving the receipt is unable to write, the receipt shall be attested by some person able to do so."

Certain persons may not purchase.

135. Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Old Acts.—Section 133 of Act X of 1859; section 90 of Act VIII B. C. of 1869.

Under section 185 of the Indian Penal Code, persons, prohibited by this section to purchase, are liable to be punished with imprisonment extending to one month, or with fine extending to two hundred rupees, or with both, if they purchase or *bid for* the distrained property.

Procedure where demand is paid before the sale.

136. (1) If at any time after a distraint has been made under this chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property where he is not the defaulter, deposits in the Court issuing the order of distraint, or in the hands of the distraining officer, the amount specified in the demand served under section 125, with all costs which may have been incurred after the service of the demand, the Court or officer, as the case may be, shall grant a receipt for the same and the distraint shall forthwith be withdrawn.

(2) When the distraining officer receives the deposit, he shall forthwith pay it into the Court.

(3) A receipt granted under this section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

(4) After the expiration of one month from the date of a deposit being made under this section, the Court shall pay therefrom to the applicant for distraint the amount due to him, unless in the meanwhile the owner of the property distrained has instituted a suit against the applicant contesting the legality of the distraint and claiming compensation in respect of the same.

(5) A landlord shall not be deemed to have consented to his temant's subletting the holding or any part thereof merely by reason of his having received an amount deposited under this section by an inferior tenant.

Old Acts.—Sub-section (1) replaces section 121 of Act X of 1859 and section 77 of Act VIII B. C. of 1869. The other sub-sections are new.

The High Court have proposed the following rule for regulating the procedure under sub-section (1) :—

"16. When a distraint is withdrawn under section 136, the notification of distraint, published under section 124, shall be taken down."

Amount paid by under-tenant for his lessor may be deducted from rent.

137. (1) Where an inferior tenant, on his property being lawfully distrained under this chapter for the default of a superior tenant, makes any payment under the last foregoing section, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on, until the defaulter is reached.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under the last foregoing section to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this section.

This is new.

Sub-section (1) only provides for the deduction of *payments made* by the under-tenant when his crop has been distrained. There is no provision in the Act for deduction of *money realized by sale* of the distrained property belonging to the under-tenant. If his landlord does not allow him to deduct the money so realized or if the money realized fell below the proper price of the distrained property, the under-tenant may, under general principles, claim and recover damages from his landlord.

Conflict between rights of superior and inferior landlords.

138. When land is sublet, and any conflict arises under this chapter between the rights of a superior and of an inferior landlord who distrain the same property, the right of the superior landlord shall prevail.

This is new.

When the superior landlord consents in writing to the sub-letting, he cannot apply for distraint (cl. 3 of prov. to sec. 121). A conflict between the rights of a superior and an inferior landlord may thus arise only when there is no written consent of the former.

Distraint of property which is under attachment.

139. When any conflict arises between an order for distraint issued under this chapter and an order issued by a Civil Court for the attachment or sale of the property which is the subject of the distraint, the order for distraint shall prevail; but, if the property is sold under that order, the surplus proceeds of the sale shall not be paid under section 134 to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

Old Acts.—First portion of section 112 of Act X of 1859; the same of section 68 of Act VIII B. C. of 1869. These portions were as follows:—"The produce of the land is held to be hypothecated for the rent payable in respect thereof."

This section makes the rent of a holding, a first charge on its distrainable crops or products. The rent is also a first charge on the holding, if the tenant is a raiyat at fixed rates or an occupancy-raiyat (sec. 65).

Suit for compensation for wrongful distraint.

140. No appeal shall lie from any order passed by a Civil Court under this chapter; but any person whose property is distrained on an application made under section 121 in any case in which such an application is not permitted by that section may institute a suit against the applicant for the recovery of compensation.

Old Acts.—Sections 139 and 141 of Act X of 1859; sections 96 and 97 of Act VIII B. C. of 1869.

Under the old Acts the right of distraint could be contested, the sale postponed, and the distrained property released on furnishing security till decree, and finally released if the contest was successful. Under the present Act, the remedy is only by a suit for compensation; and the distrained property cannot be released unless the owner of the property pays the arrears of rent and costs under section 136. The interest of third parties are, however, protected by the provisions of section 186, *post*, which makes an attempt of illegal distraint punishable for criminal trespass under the Indian Penal Code.

Before a tenant can recover damages on the ground of illegal distraint, he must prove what loss he has actually sustained (*Ujan Dewan* v. *Prannath Mandal*, 8 W. R. 220). A suit for compensation for illegal distraint does not lie in the Small Cause Court (*Haidar Ali* v. *Jafar Ali*, Ind. 1 Cal. 183).

Under the old law it was held that a landlord was not liable for compensation when his agent, who was not authorized in that behalf, made any illegal distraint (*Ramjay Mandal* v. *Kali Mohan Roy Chowdhry*, Marsh. 283; *see* also *Syama Sundari Devi* v. *Malyat Mandal*, 11 W. R. 101). Under the present Act the agent cannot make any application unless he is so authorized in writing (sec. 187). If an authorized agent makes an application for illegal distraint and the distraint is allowed by the Court, the principal is liable for compensation.

Power for Local Government to authorize distraint in certain cases.

141. (1). When the Local Government is of opinion that in any local area or in any class of cases it would, by reason of the character of the cultivation or the habits of the cultivators, be impracticable for a landlord to realize his rent by an application

under this chapter, to the Civil Court, it may, from time to time, by order, authorize the landlord to distrain, by himself or his agent, any produce for the distraint of which he would be entitled to apply under this chapter to the Civil Court:

Provided that every person distraining any produce under such authorization shall proceed in the manner prescribed by section 124, and shall forthwith give notice, in such form as the High Court may, by rule, prescribe, to the Civil Court having jurisdiction to entertain an application for distraining the produce, and that Court shall, with no avoidable delay, depute an officer to take charge of the produce distrained.

(2) When an officer of the Court has taken charge of any distrained produce under this section, the proceedings shall thereafter be conducted in all respects as if he had distrained it under section 124.

(3) The Local Government may at any time rescind any order made by it under this section.

This is new.

The Local Government has yet made no order under sub-section (1).

The High Court have proposed the following form of notice under sub-section (2):—

"18. Every person distraining produce by virtue of the authority conferred on him under section 141 of Act VIII of 1885, shall give notice of such distraint to the Civil Court having jurisdiction to entertain an application for the distraint of such produce in a tabular form which shall contain the following particulars :—

(*a*) The name and address of the person at whose instance the distraint was made, and a description of his interest in the property, whether as proprietor, tenure-holder, or raiyat.

(*b*) The name of the defaulter and of the place in which he resides, or was known to be last residing.

(*c*) The amount of the arrear with interest, if any, and the period in respect of which it is claimed,

(*d*) The holding in respect of which the arrear is claimed, the boundaries thereof, or such other particulars as may suffice for its identification.

(*e*) The description and approximate value of the produce distrained, and if the same has been reaped or gathered, the place in which it is stored.

(*f*) The name of the person by whom the distraint was actually made, and the name and address of the person in whose charge the produce has been placed.

(*g*) The date on which the distraint was made.

(*h*) If the crop or produce is standing or ungathered, the time at which it is likely to be cut or gathered."

Power for High Court to make rules.

142. The High Court may, from time to time, make rules consistent with this Act for regulating the procedure in all cases under this chapter.

This is new.

The rules proposed by the High Court for regulating the procedure under the different sections of this Chapter have been given under each of them.

CHAPTER XIII.

JUDICIAL PROCEDURE.

ONE of the avowed objects in recasting the rent-law was to devise, as far as possible, an abbreviated procedure for suits between the landlord and tenant. And this Chapter contains the changes in ordinary procedure which, the Legislature thought, could safely be adopted. To effect a further simplification in procedure, if it is found possible to do so, after experience is acquired of the working of the Courts under the new Act, provision has been made empowering the High Court, with the approval of the Governor-General in Council, to make rules declaring that any portions of the Civil Procedure Code shall not apply or shall apply with modifications to suits between the landlord and tenant.

The Rent Commission observed : "In order that justice may be done, truth must be elucidated ; and the elucidation of truth requires time and patience. Any attempt to abridge judicial inquiry by arbitrary and abnormal presumptions in favor of either party, which by precluding the production of evidence may enable Judges to arrive at

rapid conclusions, is retrogressive and unsafe. The history of the judicial administration of this country for the last half century is a continuous record of the abandonment of a system of procedure under which rights were hastily and perfunctorily adjudicated upon, the person defeated and dissatisfied being left to a "regular suit" to right himself, if wronged by an irregular proceeding which too often saddled him with the burden of proof that should have laid on the shoulders of his adversary, and thus unfairly diminished his chance of ultimate success. We entirely agree in the wisdom which has abolished this system, we will not say, of administering justice but of choking litigation, and we cannot recommend the adoption of any summary procedure for rent-suits which would involve even a partial renewal of it."

In the Statement of Objects and Reasons that accompanied Bill No. I, it was remarked: "If the Legislature consented to provide a summary procedure for rent-suits, it would probably feel bound to surround it with so many safeguards that the plaintiff would gain nothing by adopting it; and, even if such safeguards were dispensed with in the Act, *the Courts would naturally be so cautious about refusing leave to defend or requiring security from a penniless raiyat*, that the so-called summary remedy would cease to be summary, and, like the summary suits of former days in some parts of India, become as lengthy and as complicated as an ordinary suit, with the further disadvantage of not being final."

Some suggestions for simplifying the procedure were referred to the Hon'ble Judges of the High Court. They concluded their reply with these remarks:—"The Judges are fully sensible of the necessity for affording assistance to the landlords in the speedy and cheap recovery of the rents due to them, and are aware that at present much real cause for complaint exists. It would therefore have been a matter of satisfaction to them, had they been able to accept any of the suggestions put forward for the simplification of procedure and the removal of the means now too often employed by raiyats to harass their zemindars. It is, however, scarcely possible legally to facilitate the recovery of rents without putting into the hands of unscrupulous landlords or their subordinates weapons which may be easily used for the oppression of their tenants." The Hon'ble Judges pointed out that the only remedies for expense and delay are to be found in the lowering of Court-fee duties and in the multiplication of Courts.

Power to modify Civil Procedure Code in its application to landlord and tenant suits.

143. (1) The High Court may, from time to time, with the approval of the Governor General in Council, make rules consistent with this Act declaring that any portions of the Code of Civil Procedure XIV of 1882 shall not apply to suits between landlord and

tenant as such or to any specified classes of such suits, or shall apply to them subject to modifications specified in the rules.

(2) Subject to any rules so made, and subject also to the other provisions of this Act, the Code of Civil Procedure XIV of 1882 shall apply to all such suits.

Old Acts. Sub-section (1) is new. Sub-section (2) replaces section 34 of Act VIII B. C. of 1869.

Sub-section (1).—The High Court have not as yet framed any rules under sub-section (1). And it is not likely that any such rules will soon be framed. The word "suits" apparently includes all proceedings from the filing of the plaint to the satisfaction of the decree.

Sub-section (2).—A general rule for the interpretation of statutes is that a retro-active effect should not, in the absence of express language or necessary implication, be given to a statute so as to affect existing *rights*. Section 6 of the General Clauses' Act provides that the repeal of any Statute, Act or Regulation shall not affect any *proceedings* commenced before the repealing Act came into operation. *Procedure*, however, is different from proceedings. It is "the machinery by which proceedings are conducted" (*per* Garth, C. J., *Ranjit Sing* v. *Meherban Koer*, Ind. 3 Cal. 675), or "the rules of practice whereby rights are effectuated through the successful application of proper remedies" (*per* Jackson, J., *Ibid.* 677). Section 108 of Act VIII B. C. of 1869 expressly saved, for pending suits and proceedings and appeals therein, the practice and procedure of the repealed Acts. There is no such section in the present Act, and it would appear that the provisions of this Act apply to all matters of procedure, *pure and simple*, in suits instituted before, but pending on, the 1st of November, 1885, and in applications and appeals therein. Matters of *right*, though contained in this or any other chapter, and mixed with matters of procedure, are, however, not affected in such suits, appeals and applications. To take an example, though in a sale of a tenancy in execution of a decree, for arrears of rent thereof, obtained under the old Acts, the sale proclamation will be served as in section 163 of this Act, a claim to the tenancy will be adjudicated under section 63 of Act VIII B. C. of 1869, or section 106 of Act X of 1859, in spite of section 170 of this Act.

Jurisdiction in proceedings under Act.

144. (1) The cause of action in all suits between landlord and tenant as such shall, for the purposes of the Code of Civil Procedure XIV of 1882,

be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the suit is brought.

(2) When under this Act a Civil Court is authorized to make an order on the application of a landlord or a tenant, the application shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the tenure or holding in connection with which the application is brought.

Old Acts.—Section 85 of Act VIII B. C. of 1869.

Along with this section should be read section 19 of the Civil Procedure Code XIV of 1882. That section provides: "If the suit be to obtain relief respecting, or compensation for wrong to, immovable property situate within the limits of a single district, but within the jurisdiction of different Courts, the suit may be instituted in the Court within whose jurisdiction any portion of the property is situate; provided that, in respect of value of the subject-matter of the suit, the entire claim is recognizable by such Court. If the immovable property be situate within the limits of different districts, the suit may be instituted in any Court, otherwise competent to try it, within whose jurisdiction any portion of the property is situate." Where a suit may be instituted in more Courts than one, the defendant may apply to have the suit transferred from the Court in which it has been instituted to any other Court having jurisdiction. Sections 22, 23 and 24 of the Civil Procedure Code provide for the procedure to be followed in, and the Court to be resorted to, for making such an application.

It would appear that it is where the lands of the same tenancy are situate within the jurisdiction of two or more Civil Courts, that the landlord may sue in any one of these Courts. But where there are several tenancies held by the same tenant, but situate within the jurisdiction of different Civil Courts, the landlord may not join on account of all these tenancies in any one of the Civil Courts. For, though section 45 of the Civil Procedure Code allows the plaintiff to join several causes of action in the same suit against the same defendant, the provisions of section 45 are expressly subject to those of Chapter II of that Code; and section 16 in that Chapter provides that suits for relief respecting, or compensation for wrong to, immovable property shall be instituted in the Court within the local limits of whose jurisdiction the property is situate. A landlord may, doubtless, join in the same suit causes of action respecting several tenancies held by the same tenant and situate

within the jurisdiction of the same Court. But if these different causes of action cannot be conveniently tried together, the Court may separate them before the first hearing of its own motion or on the application of a party, and subsequently if the parties agree.

This section only provides for the local jurisdiction of the Court. The pecuniary limit is governed by the Bengal Civil Courts Act VI of 1871 which enacts that the jurisdiction of a Munsif extends to all original suits in which the amount or value of the subject-matter in dispute does not exceed one thousand rupees (sec. 20). In other suits the original jurisdiction is with the Subordinate Judge (sec. 19; C. P. Code, sec. 15). The valuation of the subject-matter in dispute which settles the jurisdiction of the Court is according to its market value and not under the special rules of the Court Fees Act (*Nanhoon Sing* v. *Tofani Sing*, 12 Beng. 113, 20 W. R. 33; *Jubraj Sing* v. *Indrajit Mahtoon*, 12 Beng. 115, note, 18 W. R. 109; *Chandra Nath Bhattacharjee* v. *Brindaban Shaha*, 25 W. R. 39). Those rules are only for the purpose of ascertaining the stamp leviable on the plaint. Section 7, sub-section 11, of the Court Fees Act VII of 1870, provides :—

The amount of fee payable under this Act, in the following suits between landlord and tenant—

(*b*) to enhance the rent of a tenant having a right of occupancy,

(*e*) to recover the occupancy of land from which a tenant has been illegally ejected by the landlord, and

(*f*) for abatement of rent,

shall be computed according to the amount of the rent of the land to which the suit refers, payable for the year next before the date of presenting the plaint.

Náibs or gomáshtas to be recognized agents.

145. Every náib or gumáshta of a landlord empowered in this behalf by a written authority under the hand of the landlord shall, for the purposes of every such suit or application, be deemed to be the recognized agent of the landlord within the meaning of the Code of Civil Procedure XIV of 1882, notwithstanding that the landlord may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending, or in which the application is made.

Old Acts.—Section 69 of Act X of 1859; section 32 of Act VIII B. C. of 1869.

A recognized agent may make any appearance, application or act in or to any Court required or authorized by law to be made or done by a party in such Court, except when otherwise expressly provided by any law for the time being in force: *provided that any such appearance shall be made by the party in person if the Court so direct* (section 36, Act XIV of 1882).

The written authority empowering the náib or gumáshta to appear, act or apply for the principal requires to be stamped, under art. 50 Sched. I of Act I of 1879, as follows:—

"(*a*)	When executed for the sole purpose of procuring the presentation of one or more documents for registration, in relation to a single transaction...	Eight annas.
(*b*)	When authorizing one person or more to act in a single transaction other than that mentioned in (*a*)	One rupee.
(*c*)	When authorizing not more than five persons to act jointly and severally in more than one transaction or generally	Five rupees.
(*d*)	When authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally ...	Ten rupees.
(*e*)	In any other case	One rupee for each person authorized.

Explanation.—For the purposes of art. 50, more persons than one when belonging to the same firm shall be deemed to be one person."

When an instrument contains a several power-of-attorney conferred by two or more persons, it requires a separate stamp for each power (*In the matter of Jay Kissen Mukerjee*, per Garth, C. J., and Field and Wilson, JJ, Board's Rev. Cir., December, 1885, p. 108).

A náib or gumáshta cannot sue in his own name; he must sue in the name and on behalf of his employer, for no man can be plaintiff except the person or persons who have the right to recover (*Madhusudan Sing* v. *Moran & Co.*, 11 W. R. 43; *Moka Harakraj Joshi* v. *Bisvesvar Das*, 13 W. R. 344; *Kunjavihàri Roy* v. *Purna Chandra Chatterjee*, Ind. 9 Cal. 450, 12 Cal. 55).

Special register of suits.

146. The particulars referred to in section 58 of the Code of Civil Procedure XIV of 1882 shall, in the case of such suits, instead of being entered in

the register of civil suits prescribed by that section, be entered in a special register to be kept by each Civil Court, in such form as the Local Government may, from time to time, prescribe in this behalf.

Old Acts.—Section 42 of Act VIII B. C. of 1869. Section 58 of the Civil Procedure Code provides that the particulars mentioned in section 50 of the Code should be entered in a book to be kept for the purpose, and called the Register of civil suits. These particulars are (1) the name of the Court in which the suit is brought; (2) the name, description and place of residence of the plaintiff; (3) the name, description and place of residence of the defendant; (4) a plain and concise statement of the cause of action, and when and where it arose; (5) a demand of the relief claimed, and (6) the amount allowed as set-off, or relinquished, if any.

The Lieutenant-Governor has directed that the special register to be kept by each Civil Court, in accordance with the provisions of this section shall be in the form prescribed by section 58, Act XIV of 1882, and numbered as 116 in the 4th schedule to that Act. (*Calcutta Gazette*, March 3, 1886).

The provision of this section for a separate register is for statistical purposes and not for the purpose of separating into parts the jurisdiction exercised by the same Court, so as to render a suit brought under the Rent Act liable to be struck off in order that a fresh suit may be brought under the Civil Procedure Code on the same cause of action (*Jalaluddin* v. *Maharaja of Durbhanga*, 18 W. R. 99). The mere fact of a suit being registered in the book of rent suits does not limit the plaintiff to claim rights as allowed by the Rent Act, if he did not specifically base his right under that Act (*Ramnarain Mitter* v. *Nabin Chandra Murdafarash*, 18 W. R. 208). "It was one of the purposes of the Legislature when it removed the cognizance of certain class of actions (rent suits) from the Collector's Court to the Munsif's Court that there should be no longer any question in any case whether the suitor had invoked the exercise of the right jurisdiction and whether the Court was competent to do complete justice between the parties. It is the plain duty of the Court when a suit is brought before it to entertain it and to endeavour to try the matter in question between the parties and upon the whole merits" (*Pryag Dutt Ray* v. *Fekoo Ray*, 19 W. R. 160). Two causes of action, one by plaintiff as purchaser of arrears of rent, and the other for rent due, were held to be properly joined in one suit cognizable by the Civil Court without any distinction as that of different sides of the Court (*Lala Bhagavan Sahay* v. *Sungesvar Choudhuri*, 19 W. R. 431). When different causes of action are joined together, some under the Tenancy Act, others not so, the Court may, under the provisions of section

45 of the Civil Procedure Code, order that they be separated when these causes of action cannot be conveniently tried together.

Successive rent-suits.

147. Subject to the provisions of section 373 of the Code of Civil Procedure XIV of 1882, where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

This is new.

The Select Committee reported : "We have substituted for the section of the Bill No. II regulating the instalments in which rent is to be payable the following simpler provision, namely :—

"53. Subject to agreement or established usage a money-rent payable by a tenure-holder or raiyat shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year" ;

"and to prevent raiyats being harassed by successive suits for arrears, when by agreement or custom a larger number of instalments than four may be established, we have inserted in Chapter XIII, a section (147) enacting in effect that such suits shall not be instituted against a raiyat oftener than once in three months."

As pointed out under section 53 the result of sections 53, 67, 147 and 178 (3) (*h*) is, that there is no penalty for withholding rent till the end of the quarter-day, except in case where there is a contract made *before* the 14th of March, 1885, to pay interest on arrears falling due oftener than quarterly.

Section 373 of the Civil Procedure Code provides : "If, at any time after the institution of the suit, the Court is satisfied on the application of the plaintiff (*a*) that the suit must fail by reason of some formal defect, or (*b*) that there are sufficient grounds for permitting him to withdraw from the suit or to abandon part of his claim with liberty to bring a fresh suit for the subject-matter of the suit or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit. If the plaintiff withdraw from the suit, or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part. Nothing in this section

shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others."

In connection with this section, should be read section 43 of the Civil Procedure Code. It provides :—

"Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action ; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies ; but if he omits (except with the leave of the Court obtained before the first hearing) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted. For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

Illustration.

"A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. A sues B only for the rent due for 1882. A shall not afterwards sue B for the rent due for 1881."

This section enacted a legislative reversal of the decisions in *Raja Satya Charan Ghosal* v. *Abhayanand Das*, 2 W. R. X. 31, *Ram Sundar Sen* v. *Krishna Chandra Gupta*, 17 W. R. 380, and *Krishna Kinkar Paramanik* v. *Ramdhan Chettangia*, 24 W. R. 326, where it had been held that arrears of rent for successive instalments or years were several and distinct causes of action, in respect of which it was perfectly competent to the party entitled to institute separate suits ; and their recovery was not barred merely because they had not been included in a suit for arrears of rent instituted after they became due. Under the provisions of section 43, when arrears of rent are due for more instalment or years than one, and a plaintiff sues for the earlier instalments or years and omits to sue for the later instalments or years, his claim for the arrears of the later period is barred, and he cannot subsequently sue for them (*Tarak Chandra Mukherjee* v. *Panchu Mohini Devi*, Ind. 6 Cal. 791, 8 Cal. 297 ; *Shiv Sankur Sahay* v. *Hriday Narain*, Ind. 9 Cal. 143). In the former case, it was remarked :—"There can be no reason to distinguish between a suit omitting to claim an earlier rent and a suit omitting to claim a later rent which is due at the date of its institution." A representative of the plaintiff cannot subsequently sue for the part omitted or relinquished by him (*Surja Prasad Tewary* v. *Sahib Lal Tewary*, 3 W. R. 25). A landlord may not thus by subsequent sale evade the provisions of section 43, Civil Procedure Code.

It may be noted that, under this Act, there can be no suit for recovery of enhanced rent before enhancement is obtained. The suit is only for determination of enhanced rent. Such a suit is no bar to a suit for recovery for arrears of rent due before the institution of such suit.

The result of section 43, Civil Procedure Code, and the decisions under it, taken with sections 67 of this Act, is that a suit for recovery of rent should include all arrears due for the tenancy to the same landlord at the date of the institution of the suit, the arrears falling due where not otherwise under contract or custom, at the end of each quarter-day of the year.

To the above rule the present section adds another, namely, that the landlord may not bring a second suit for the recovery of rent within three months of a previous suit for the same purpose, if the tenant from whom rent is due is a *raiyat*. This section does not apply to the case of either a tenure-holder or an under-raiyat. It is doubtful whether the word "landlord" in this section should, following the construction of section 43, Civil Procedure Code, where plaintiff includes his representative, be construed to include a purchaser from the landlord. Unless it is so construed, the provisions of this section may be evaded by a landlord bent to harass his raiyats. If rent is payable in monthly instalments the landlord may nominally sell the arrears for the first and the second months to some of his creatures and keep those for the third months to himself, and thus twelve suits may be brought during the year by these persons alternately. On the other hand, it may be argued that suits by purchasers of arrears of rent are not rent-suits properly so called, but suits for debt; and this section (147) applies only to rent-suits. It is likely that the latter view will prevail.

Procedure in rent-suits.

148. The following rules shall apply to suits for the recovery of rent:—

(*a*) sections 121 to 127 (both inclusive), 129, 305 and 320 to 326 (both inclusive) of the Code of Civil Procedure XIV of 1882 shall not apply to any such suit:

(*b*) the plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure XIV of 1882, a statement of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification:

(*c*) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only:

(*d*) the service of the summons may, if the High Court by rule, either generally, or specially for any local area, so directs, be effected, either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the defendant and registered under Part III of the Indian Post Office Act, XIV of 1866;

when a summons is so forwarded in a letter, and it is proved that the letter was posted and registered, the Court may presume that the summons has been duly served:

(*e*) a written statement shall not be filed without the leave of the Court:

(*f*) the rules for recording the evidence of witnesses prescribed by section 189 of the Code of Civil Procedure XIV of 1882 shall apply, whether an appeal is allowed or not:

(*g*) the Court may, when passing the decree, order on the oral application of the decree-holder the execution thereof, unless it is a decree for ejectment for arrears:

(*h*) notwithstanding anything contained in section 232 of Code of Civil Procedure XIV of 1882, an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him.

This is new.

The abbreviated procedure of this section does not apply to suits other than those for recovery of arrears of rent.

Clause (a).—Sections 121 to 127 of the Civil Procedure Code relate to the examination of parties by interrogatories and the consequence of omission to answer. Section 129 empowers the Court to order discovery of documents. Section 305 empowers the Court to postpone a sale to enable the judgment-debtor to raise the amount of the decree by mortgage, lease or private sale of the attached property. Section 320 to 326 provide for the transfer to the Collector of execution proceedings in which immovable property is to be sold.

Clause (b).—Section 41 of Act X of 1859 provided: "If the suit be for the ejectment of a raiyat, farmer or tenant from any land, farm or tenure, or for the recovery of the occupancy or possession of any land, farm or tenure, the statement shall describe (as circumstances may require) the extent, situation and designation of the same; and, if necessary for identification of the land, shall set forth the boundaries of such land." The provisions of this clause apply to suits for the recovery of arrears of rent. The reason of making these provisions is to make each such suit, so far as it goes, a binding record of rights between the parties. The particulars specified in section 50, Civil Procedure Code, will be found under section 146, *ante*, p. 320.

Where, in a suit for recovery of rent, the parties agree as to the boundaries and the boundaries are definite, but dispute about the area included within such boundaries, the Court need not enter into any question regarding the area, unless the amount of rent be ascertainable according to the quantity of land: (see *Pahalwan Sing* v. *Mahesvar Baksh Sing Bahadur*, 9 Beng. 169). Where, however, parties agree about the area but dispute about the boundaries, it may be necessary to find the correct boundaries, before a decision regarding the suit may be made. But a difference in the name of the persons who hold the boundary-lands is not, by itself, a dispute regarding the correct boundaries; for the parties may fully agree as to the boundaries while disagreeing about the persons who hold the boundary-lands. Where parties disagree both as regards the area and the boundaries of the tenancy, the question of area and boundaries may have to be decided before a decision on the suit may be made.

Illustrations.

1. A, a landlord, sues B for rent at Rs. 20 per annum for three plots of land, within *definite* boundaries, alleged to measure 20 bighas. B admits the annual rent and the boundaries, but asserts that the area is 25 bighas. The Court will not enter into the question of area.

2. A, a landlord, sues B for rent at Re. 1 per bigha for three plots of land, within *definite* boundaries, alleged to measure 20 bighas. B admits the rate of

rent and the boundaries, but asserts that the area is only 15 bighas. The Court must decide what the area is before it may decide the suit.

3. A sues B for rent at Rs. 20 per annum for three plots of land measuring 20 bighas, and contained within boundaries stated. B admits the area and the annual rent, but disputes the boundaries of one plot. It appears that the dispute is such that it is not a question only as to who hold the boundary-lands, but that B claims to hold a plot different from what is stated by A. The Court must decide which of the two plots is really included in the tenancy before it may decide the suit.

4. A sues B for rent at Re. 1 per bigha of three plots of land within definite boundaries and alleged to measure 4, 5 and 6 bighas, respectively. B admits the area and the boundaries of plot No. 1; asserts that the boundaries as given by A of plot No. 2 is incorrect, including only 3 bighas of land, whereas the area given by A as 5 bighas is correct; and that neither the boundaries nor the area given of plot No. 3 is correct, the area being 3 bighas. The Court must find the area and the boundaries before it may decide the suit.

Clause (d).—The High Court have not yet, by rule, directed the service of summons on the defendant by registered letter. So long as the rule that no suit for arrears of rent shall be called on and tried *ex parte* when the summons shall not have been served at least fourteen clear days before the day of hearing, remains as it is, service of summons by registered letter will scarcely be convenient.

Clause (e).—This clause makes section 110 of the Civil Procedure Code inapplicable to suits between landlords and tenants. Under that section both the landlord and the tenant had a right to file written statements of their respective cases at or before the first hearing; and the Court was bound to receive such statements and place them on the record. The general rule in suits for arrears of rent would now be, to examine parties at the first hearing and ascertain upon what material propositions of fact or of law they are at variance (section 146 of the Civil Procedure Code). These material propositions may also be ascertained from the pleaders of the parties (section 147). When parties are examined to ascertain the material facts, the examination shall be on oath (*Ibid*).

Written statements *called for by the Court* after the first hearing of the suit requires no Court-fee Stamp (sec. 19, cl. 3 of Act VII of 1870). Written statements filed at or before the first hearing of the suit are also exempt from any fee (*Nagu* v. *Yaknath*, Ind. 5 Bom. 400; *Cherag Ali* v. *Kadir Mahomed*, 12 Cal. 367).

Clause (f).—Section 189 of the Civil Procedure Code provides that in cases in which no appeal lies, it shall not be necessary to take down the evidence of the witnesses at length; but the Judge, as the examination of each witness proceeds, shall

make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Jûdge with his own hand and shall form part of the record. In suits for recovery of arrears of rent, whether there is an appeal or not, only a memorandum of the deposition will now be made.

Clause (g).—A decree for ejectment for arrears of rent due at the end of the Bengali year or at the end of Jyet of the Fasli or Amli year cannot be executed if the amount decreed and costs are paid into Court within fifteen days of the decree (sec. 66). There can obviously be no immediate execution of such a decree. This clause enacts that execution of all other decrees for arrears of rent may be had on oral application made when the decree is passed. This is an amplification of section 256 of the Civil Procedure Code; and immediate execution may now be had, on oral application, of a decree in a rent suit, even if the decretal amount exceeds Rs. 1,000, and that not only against the person and the movable property of the tenant but also against his immovable property.

Clause (h).—This clause prevents the transfer of decrees for arrears of rent to a speculator. Though a decree for arrears of rent may not now be transferred unless with the land, arrears of rent remain transferable as under the old law. In *Syama Sundari Dasi* v. *Brindaban Chandra Majumdar*, 1 Hay. 574, it was held that a suit for money by a purchaser of arrears of rent is a suit for arrears of rent. And this ruling was followed in *Krishna Kumar Mitra* v. *Mohesh Chandra Banerjee*, W. R. Sp. X. 3, and *Hari Nath Majumdar* v. *Moran*, Ibid. 127. In *Lala Bhagavan Sahay* v. *Sungesvar Chowdry*, 19 W. R. 431, a contrary view was taken. It was observed :—"In this case there appears to be two causes of action. One for two years' rent by the plaintiff as the purchaser of the arrears of rent due in respect of those years, the purchaser in fact of a debt for which he must sue in the Civil Court, and it is not a suit for rent due to the plaintiff. The other is a cause of action for what may be correctly described as rent. Now, the Civil Courts have jurisdiction in both suits." It is likely that the latter view will prevail. For, suppose, rent due from a non-occupancy-raiyat at the end of the year is sold; can the purchaser have a decree for ejectment under sec. 66? Suppose, again, rent due from an occupancy-raiyat is sold, can the purchaser have the holding sold where occupancy-holdings are not transferable by local usage? or can he have it sold with power to avoid all incumbrances under section 166? If the answers to these questions are in the negative, as they must be, it would appear that a suit by a purchaser of an arrear of rent is not a rent-suit but a suit for debt.

The following rules were framed by the High Court for the prompt trial of undefended and other suits for arrears of rent under Act VIII B. C. of 1869. Under section 2, sub-section 3 of this Act, they would apply to suits under it :—

"(*a*) Every summons in any suit for arrears of rent, not being a suit in which enhancement is sought, shall command the defendant to appear at the expiration of fourteen clear days after service thereof.

"(*b*) Every such suit entered in the Register shall be marked thus :—'Rent Suit,' 'Baki khazanar Mokuddama,' 'Baki Malgoozari.'

"(*c*) Immediately on the return of the summons in any such 'Rent Suit,' the suit shall be entered in a List of Causes in the following form, to be stuck up in the Court-house, specifying the day for hearing, which shall be the day fixed for the appearance of the defendant, or on the earliest day on which the Court shall sit after such day :—

List of Rent Suits in the Court of the of

Number of Case on the Register.	Names of Parties.	Claim.	Date fixed for trial.

"(*d*) Each such suit shall be called on in its turn at the sitting of the Court, and before suits of any other description, upon the day for the hearing thereof; and in every case in which it shall be shown that the defendant has been duly served with the summons in proper time to enable him to appear and defend the suit, but the defendant does not, either in person or by any authorized agent or pleader, appear or make answer to the suit, the case shall be forthwith taken up and heard *ex parte*, unless in any particular case the Court, for special reasons to be recorded in the proceedings, shall think fit to order otherwise.

"(*e*) Provided, nevertheless, that no suit for arrears of rent shall be called on and tried *ex parte* when the summons shall not have been served at least fourteen clear days before the day of hearing.

"(*f*) When it appears that the summons has not been duly served, or that fourteen clear days have not elapsed from the date of the due service of the summons, the case shall stand over until a day to be fixed immediately after the expiration of fourteen clear days from the date of the due service of the summons.

"(g) Where the defendant appears and makes answer or desires to contest the claim, the case shall ordinarily be placed in the list of defended causes and come on in its turn; provided that if the case appear likely to be a short one, the Judge may take it up and try it immediately after the undefended cases fixed for the day, or may set it down for hearing on an early day, if either of such courses appear to him to be expedient with reference to the state of his file or the convenience of the parties."

Payment into Court of money admitted to be due to third person.

149. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

This is new.

This section is meant to prevent landlords being harassed by their tenants raising frivolous or collusive pleas that the rent is due to a third person.

It would appear that this section applies only when the tenant admitting the whole arrears claimed asserts that they are due to another person. Suppose, A sues B for the rent for 1290, 1291 and 1292, of two plots of land, at Rs. 10 per annum. B admits holding those two plots of land, and admits that the rent is Rs. 10, but pleads that the rent is due to C to whom he has paid for 1290 and 1291. For the claim for 1290 and 1291, the Court has to decide whether the relation of landlord and tenant exists between A and B regarding those two plots of land. And if that issue is decided for the plaintiff, there is no reason why for the claim for 1292 his relief shall be

postponed till the decision of a title suit if the third party so wills it. Suppose, again, in the same case, the tenant admits holding the lands, but pleads that rent is Rs. 5 per annum and due to C. The Court has to decide what the amount of annual rent is. In most cases the same evidence proves the relation of landlord and tenant and the amount of rent payable for the tenancy. For instance, the plaintiff may prove a kabulyat executed by the tenant in his favor. If the kabulyat is found genuine and the annual rent found to be Rs. 10, there is no reason why the Court would not at the same time find the relation of landlord and tenant proved, and why the plaintiff's relief regarding half of his claim should be postponed. It would thus seem that the application of this section is limited to cases where the tenant admits the whole arrears claimed, or where the landlord chooses to relinquish the part not admitted.

The provisions of this section may be taken advantage of by a person claiming property *other than an estate*, but not in possession to throw the burden of proof on his adversary. He may bring a number of suits for arrears of rent, and if the tenants assert that rent is payable to his adversary, they may have to pay into Court the arrears, and unless his adversary, the tenure-holder in possession, brings a suit within three months, the money so deposited will be paid to the party out of possession. Ordinarily, a person whose right is denied has to prove his case, but in such a suit the plaintiff whose title is not denied by the tenant, will have to begin his case. This is a reversal of the onus of proof on the wrong person. It is to be hoped that the Permanent Tenures Registration Act will, following the Land Registration Act, enact that an unregistered tenure-holder shall not be able to recover rent by suit or distraint.

The suit alluded to in sub-section (3) may be for a declaratory decree that the rent of the lands is due to the plaintiff under section 42 of the Specific Relief Act. Or it may be a title suit to establish the plaintiff's right to the land against the party who sued for arrears of rent.

The notice under sub-section (2) will be served according to the following rule framed by the Local Government in exercise of the power vested in it by section 189, *post* :—

"Where no other mode of service of notice is prescribed by the Tenancy Act or by these rules, service shall be effected in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, if the notice is addressed to only one person, and if it is addressed to a number of persons occupying or owning land in the same village, the notice shall be served by proclamation and beat of drum, and by posting it in the presence of not less than two persons on some conspicuous place in the village, and also by fixing it up in the village-office, if any, where the rent is usually paid."

If the party admitted to be the landlord by the tenant fails to bring a suit within three months, he may afterwards sue to recover the money from the hands of the plaintiff of the rent suit. The effect of his not suing within three months and obtaining a restraining order will only be that the money would be paid to the plaintiff of the rent suit.

The Act is silent as to the procedure to be followed after three months have elapsed from the service of the notice on the person admitted to be the landlord. If he fails to obtain a restraining order, the suit will be disposed of by ordering the amount paid into Court to be made over to the plaintiff, who will also be entitled to the costs of the suit from the defendant. If, on the other hand, the admitted landlord obtains a restraining order, the rent suit will likely remain in abeyance, for no order as to costs may be made till the final result of the other suit is known.

Intervener.—Section 77 of Act X of 1859, provided for the intervention, in a suit for recovery of rent, of third parties claiming the rent under a title hostile to that of the plaintiff. No similar provisions had any place in the repealing Act VIII B. C. of 1869. And the course of rulings was, that where a person, sued for rent, set up title in a third person and alleged that he held under and paid rent to him, such third person was not to be made a party to the suit so as to convert a simple suit for arrears of rent into one for the determination of the title to the property in respect of which the rent is claimed (*Biresvar Pande* v. *Jogendra Chandra Deb*, 24 W. R. 261; *Alakmani Debi*, v. *Dinanath Ghosh*, 24 W. R. 421; *Dayal Chand Sahay* v. *Nabin Chandra Adhikari*, 8 Beng. 180; *Lodai Molla* v. *Kali Das Ray*, Ind. 8 Cal. 238). Under the present Act also, an intervener may not be made a party.

Payment into Court of money admitted to be due to landlord.

150. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

This is new.

The provisions of this section are meant to facilitate the recovery of arrears of rent by checking the tenant from raising frivolous pleas of excessive demand in order simply to delay the decision of the suit. And they are effective. The section

applies to both when the tenant pleads that the amount of annual rent has been overstated and when he raises a plea of part payment.

Provision as to payment of portion of money.

151. When a defendant is liable to pay money into Court under either of the two last foregoing sections, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

This is new.

The discretion given to the Court to direct that the tenant pay into Court a reasonable portion of the admitted arrears would appear to include the power of giving the tenant reasonable time to pay the whole or a part of such arrears.

Court to grant receipt.

152. When a defendant pays money into Court under either of the said sections, the Court shall give the defendant a receipt, and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

This is new.

When money is paid under section 150, the Court may at once order payment of the amount to the plaintiff. As the Account Rules stand at present, it would appear that the money may not be passed direct from the tenant to the landlord. For in such transactions the Court may not grant any receipt (Account Rules, art. 8). It would be a positive improvement if the rules be so altered as to allow the money to pass directly from one party to the other, the fact being acknowledged in the record by the plaintiff and the Court granting a receipt to the tenant.

Appeals in rent-suits.

153. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent where—

(*a*) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or

(*b*) the decree or order is passed by any other judicial officer specially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant:

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and may pass such order as the District Judge thinks fit.

Old Acts.—Section 102 of Act VIII B. C. of 1869; section 153 of Act X of 1859. The former enacted: "Nothing in this Act contained shall be deemed to confer any power of appeal in any suit tried and decided by a District Judge, originally or in appeal, if the amount sued for, or the value of the property claimed, does not exceed one hundred rupees, in which suit a question of right to enhance, or vary the rent of a raiyat or tenant, or any question relating to a title to land or to some interest in land as between parties having conflicting claims thereto, has not been determined by the judgment."

The latter enacted: "In suits under clauses 2, 4 and 7 of section 23" (*i. e.*, suits for damages for illegal exactions of rent or abwabs, or for refusal of receipts, suits for arrears of rent and suits arising out of the exercise of the power of distraint) "and under-section 24" (*i. e.*, suits by landlords against agents for money or accounts) "of this Act, tried and decided by a Collector, if the amount sued for or the value of the property claimed does not exceed one hundred rupees, the judgment of the Collector shall be final and not open to revision or appeal except as hereinafter provided, unless in any such suit a question of right to enhance or

otherwise vary the rent of a raiyat or tenant, or any question relating to a title to land, or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in sections 160 and 161 of this Act."

Difference from the old Acts.—While the provisions of Act X of 1859 applied to six classes of suits mentioned above, and the provisions of Act VIII B. C. of 1869 applied to all classes of suits under that Act, the provisions of this section are restricted to only one class of suits, *i. e.*, suits for recovery of rent. An appeal therefore lies in all other suits under the provisions of the Civil Procedure Code. But while the restriction under Act VIII B. C. of 1869 was only where the order or decree was made by the District Judge, which term was held to include an Additional Judge (*Braja Misra* v. *Ahladi Misrani*, 13 Beng. 376, 21 W. R. 320), in a suit of a value not exceeding Rs. 100, the restriction under this Act is extended to an order or decree in such a suit passed by a Subordinate Judge, and to an order or decree in suits of a value not exceeding Rs. 50, passed by a specially-empowered judicial officer of a lower rank.

No judicial officer, however, has yet been especially empowered by the Local Government to exercise final jurisdiction in cases of value not exceeding Rs. 50.

Suit for the recovery of rent.—Under Act I B. C. of 1879 a suit for arrears of rent and for ejectment for non-payment of arrears, has been held to be a simple suit for arrears of rent, and an appeal lies in such a suit (*Ramjan Khan* v. *Raman Chamar*, Ind. 10 Cal. 89). This seems to be not so under this Act. Section 148, clause (*g*) treats a suit for arrears of rent and ejectment therefor as a suit for recovery of rent.

Order in a suit.—Under the old Acts these words were held to include every order prior to decree or subsequently in execution (*Dev Kumari Dasi* v. *Gangadhar Datta*, 17 W. R. 189; *Krishna Chandra Chakravarti* v. *Anand Kumar Datta*, 19 W. R. 307; *Kedarnath Bisvas* v. *Hara Prasad Ray Chowdry*, 23 W. R. 207; *Parvati Charan Sen* v. *Sheik Mandari*, Ind. 5 Cal. 594).

Amount claimed in suit does not exceed.—In the Full Bench case of *Tulsi Panda* v. *Buchu Lal*, Ind. 9 Cal. 596, it was held that, unless the fact that the claim did not exceed the specified amount appeared from the finding of the Court or elsewhere upon the proceedings, the Appellate Court had no right to draw any inference to that effect. In this case ejectment was claimed for non-payment of arrears, but it did not appear what the value of the tenant's interest in the land was.

A question relating to land between parties having conflicting claims.—The first exception to the provisions, that there is no appeal against an order or decree in a suit for recovery of rent, is the case where the order or decree decides a question relating to title to land or to some interest in land as between parties having conflicting claims thereto. It will be noted that, under the present Act, it is not in every order in such a suit that is appealable, but only order or decree which has decided the question relating to land. A decision based on want of proof of relationship of landlord and tenant between the parties is not a decision of a question relating to land, and is not appealable (*Hari Mohan Majumdar* v. *Dwarkanath Sen*, 18 W. R. 42; *Karim Sheikh* v. *Mokhada Sundari Dasi*, 23 W. R. 11, and, on appeal under section 15 of the Letters Patent, 23 W. R. 268, 15 Beng. 111; *Kripamayi Devi* v. *Draupadi Choudhurani*, 24 W. R. 213). So no appeal lies in a suit where the tenant repudiates the tenancy without denying the landlord's title to the land (*Isan Chundra Ghosal* v. *Brahmomayi Dasi*, 16 W. R. 233). So no appeal lies in a suit where the tenant pleaded that the plaintiff has ceased to have any interest in the land; for there is no finding between the plaintiff and any other person claiming title to the land (*Donzelli* v. *Tekan Nodaf*, 2 Cal. 558). In a suit where the tenant sets up a title in a third party and the latter is *not made party* to the suit, the decision cannot be considered to be a binding decision in respect of title to land as between parties having conflicting claims thereto (*Sheikh Dilbar* v. *Isvara Chandra Ray*, 21 W. R. 36; *Kasiram Das* v. *Maharani Sham Mohini*, 23 W. R. 227; *Ramprasad Ray* v. *Sarup Paramanik*, Ind. 8 Cal. 712). In a suit in which the tenant admits his tenancy, but claims to pay the rent to himself as mortgagee of the landlord, there is no conflicting claim relating to the land, and no appeal lies (*Rajkishen Mukherjee* v. *Pyari Mohan Mukherjee*, 24 W. R. 114).

A question of the amount of rent annually payable.—The addition of this last clause makes a considerable change in the old law. And the following decisions under the old Acts, where it was held that no appeal lies, are now set aside: *Golak Chandra Dutt* v. *Mia Raja Miji*, 17 W. R. 119; *Hara Prasad Chakravarti* v. *Sridam Chandra Chowdry*, 20 W. R. 15; *Haris Chandra Chakravarti* v. *Srimati Hari Bewa*, 20 W. R. 16;—(where the question was as to the amount of rent annually payable); *Narbadesvar Roy* v. *Sheikh Jangal*, 24 W. R. 49;—(where the decision was whether the rent has been subsequently altered); *Maharaj Kumar Netresvar Sing* v. *Jhoti Teli*, 23 W. R. 343; *Watson* v. *Mohendranath Pal*, 23 W. R. 436;—(where the decision was about a contract enhancing the rent).

No appeal lies in a rent suit where there is no dispute as to the amount of the annual rent, and the only question is whether it is to be paid in instal-

ments or in a lump sum (*Pyari Mohan Mukherjee* v. *Madhav Chandra Babu*, 23 W. R. 385).

Proviso. Exercised a jurisdiction not vested in him.—These provisions apply where the officer exercises a jurisdiction which he has no power to exercise, or in exercise of a jurisdiction which he has, exceeds his jurisdiction (*Sabjan Ostagar* v. *Pramatha Nath Ghose*, 6 W. R. Misc. 77 Beng. F. B. 531).

Exercised jurisdiction illegally.—A Court deciding a suit over which it has jurisdiction cannot, on the ground that it has arrived at a wrong decision, be said to have exercised its jurisdiction illegally or with material irregularity (*Amir Hassan Khan* v. *Shiv Baksh Sing*, Ind. 11 Cal. 6 P. C.)

Failed to exercise a jurisdiction vested in him.—Where a Court, having passed an informal decree, refuses to execute it on application, it fails to exercise a jurisdiction vested in it (*Khemankari Devi* v. *Rani Sarat Sundari*, 14 W. R. 9.) Where a decree-holder recovers in execution a sum in excess of the decretal amount and the judgment-debtor applies for restitution and his application is refused, the Court fails to exercise jurisdiction (*Gobind Kumar Chowdry* v. *Krista Kumar Chowdry*, 7 W. R. 520).

Date from which decree for enhancement takes effect.

154. A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.

This is new.

The provisions of this section are meant to obviate the hardship that would have otherwise arisen from the abolition of the notice of enhancement. On notice of the suit the tenant may relinquish the tenancy if he chooses, and thus avoid liability. When notice of the suit, *i. e.*, summons, is not served on the tenant three months before the end of the agricultural year, though the suit has been instituted within the first eight months, the Court may, in its discretion, direct that the decree shall take effect on the commencement of the agricultural year next but one

following; and thus give the tenant an opportunity of relinquishing if he so desires.

Relief against forfeitures.

155. (1) A suit for the ejectment of a tenant, on the ground—

(*a*) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(*b*) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,

shall not be entertained unless the landlord has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favor of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

(3) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section (2).

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy,

remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

This is new.

This section enacts double safeguards against ejectment for misuse or breach of condition, so that unless the tenant is extremely obstinate, or he has committed a misuse or breach of condition which is irremediable, he may not be ejected. A misuse or breach of condition is irremediable when it is not possible for the tenant to bring the tenancy in *statu quo ante*. For instance, if a tenant who has no right to do so, cuts down fruit and timber trees existing from before the commencement of his tenancy, he commits an irremediable misuse. Or, if a tenant, who has no indefeasible right to sublet, and who is bound by contract not to sublet on penalty of forfeiture, sublets the lands of his tenancy, the leases are binding on him, and he commits an irremediable breach of condition.

The compensation granted by the Court is for past misuse or breach of condition. For instance, when a raiyat has commenced to excavate a tank, not necessary for agricultural or incidental purposes, or to plant a fruit garden, the landlord will get only nominal compensation and an order that the tenant remedy the misuse. The amount of compensation will depend on the circumstances of each case, as also the time granted to remedy the misuse or breach of condition. The filling up of a tank may take a much longer time than the extinction of a garden. And there may be cases where it cannot be ascertained at first what time will be taken up in remedying the breach or misuse. Sub-section (3), therefore, provides that the Court may from time to time extend the original period granted to remedy it.

The Local Government has framed the following rule for the service of the landlord's notice on the tenant :—

"*Section* 155.—Notice to the tenant under this section shall be filed in the Court having jurisdiction to entertain a suit for arrears of rent of the holding, and shall be served in the manner prescribed for the service of a summons on a defendant under the Code of Civil Procedure, on payment of the fee prescribed by the High Court."

Ejectment for arrears of rent.—Where arrears of rent are due from a tenant not being a permanent tenure-holder, a raiyat at fixed rates or an occupancy-raiyat, at the end of Chyet where the Bengali year prevails, or at the end of Jyet where the Amli or Fusli year prevails, the landlord is entitled to ejectment under section 66, sub-section (1). And the procedure in such cases is that of sub-section (2) of that section, even if ejectment for arrears of rent was reserved as a breach of condition, and no notice is necessary before institution of a suit for

ejectment. In other cases, ejectment for arrears of rent may only be had if there was such a condition reserved in the contract, in cases where such a contract is valid. And the procedure in such cases will be of this section (155). For instance, a permanent tenure-holder may be liable to ejectment for arrears of rent falling due at the middle or end of a year under terms of a contract made before the commencement of this Act. A non-occupancy-raiyat may be liable under contract to ejectment falling due at the middle of the year. In such cases, the procedure to be followed is that of this section. Under the old Acts there was no separate procedure laid down for ejectment for arrears of rent as a breach of condition; and in such cases, the provisions of section 78 of Act X of 1859, or section 52 of Act VIII of 1869, which corresponded with section 66, sub-section (12) of the present Act, were held to apply (*Salano* v. *Mirza Hurmat Bahadur*, 1 Hay, 573; *Baksh Ali* v. *Ramtanu Gun*, 6 W. R. X. 64; *Sheikh Mahamad Hossein* v. *Boodhan Sing*, 7 W. R. 374; *Jan Ali Chowdry* v. *Nityananda Bose*, 10 W. R. F. B. 12; Beng. F. B. 972; *Kamka Sahoy* v. *Ramratan Niyogi*, 11 W. R. 201; *Madhav Chandra Advait Chowdry* v. *Ram Kalu Bepari*, 16 W. R. 151; *Duli Chand* v. *Meher Chand Shahu*, 12 Beng. 439, P. C.; *Duli Chand* v. *Raj Kisore*, Ind. 9 Cal. 88). This Act provides for ejectment of certain classes of tenants for certain arrears of rent by section 66. For any other ejectment, the provisions of section 155 apply. The above rulings are therefore modified in favor of the tenants by the provisions of this section.

Limitation.—The period of limitation for ejectment under clause (*b*) *i. e.*, on the ground of breach of a condition carrying forfeiture is one year from the date of the breach (art. 1, Sched. III of this Act). The period of limitation for ejectment under clause (*a*), *i. e.*, on the ground of misuse would appear to be six years (art. 120, Sched. II, Act XV of 1877).

Rights of ejected raiyats in respect of crops and land prepared for sowing.

156. The following rules shall apply in the case of every raiyat ejected from a holding:—

(*a*) when the raiyat has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment;

(*b*) when the raiyat has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the dercee for ejectment, together with reasonable interest on that value;

(*c*) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage;

(*d*) if the landlord elects under this section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

This is new.

"The obvious difference between sale and ejectment is this; when a raiyat is sold up he gets the money which includes the value of the crop on the ground. Why, when he was ejected, should he lose it? In regard to this point the Rent Commission said:—'There are in the existing law no provisions as to the *away-going crop;* and, as a natural consequence, when a tenant is ejected while the crop is on the ground, the right to this crop is a constant source of dispute and litigation. We have enacted that when a raiyat is ejected in execution of a decree—and this we have just shown is the only way in which he can be ejected—and there are upon the land at the time of the ejectment growing crops or other ungathered products of the earth, which but for the ejectment such raiyat would have been entitled to reap or gather, such raiyat shall, notwithstanding such ejectment, be entitled to reap or gather such crops or products, and may use the land for the purpose of tending, reaping, gathering and removing the same; and in the event of his doing so, he

shall be liable to pay a reasonable sum for the use and occupation of the land for these purposes (section 80). We have, however, thought it reasonable to allow the landlord an option of taking such crops or products at a reasonable valuation, if he gives notice of his intention to do so at the time when he applies for execution. If the landlord and tenant cannot agree as to the value of the crops or products, the Court may, upon the application of either of them, determine such value, and the order so determining such value shall have the force of a decree.' The principle seems a very sound one that the landlord should not by choosing his time for ejectment not only ruin his raiyat but should himself benefit by the crop in the ground which the raiyat has sown and which he is entitled to reap." (Bayley in Council.)

Under the former law when a raiyat was ejected, he lost his crop as well as his land (*Durjan Mahtoon* v. *Wazid Hossein*, Ind. 5 Cal. 135). Now, when a standing crop is on the land, he will be allowed either to continue in possession till the crop is reaped or to receive compensation. And the landlord has a right to elect, whether to allow him to hold on or to pay him compensation. When, however, there is no standing crop, but the raiyat has only prepared the land for sowing, the landlord has no right to elect, but must pay compensation.

This section only applies to raiyats, and in cases of ejectment. In cases of sale, the old law remains unaltered, and the growing crop standing on the land passes to the purchaser at the auction sale, except when it has been specially excepted in the notification of sale or a custom to the contrary has been proved (*Afatoola Surdar* v. *Dwarikanath Maitra*, Ind. 4 Cal. 814). As pointed out by Mr. Bayley, the purchase-money in such cases includes the value of the standing crop.

As in most other matters of an under-raiyat's rights, his right to standing crops are left unprovided for by this Act; and in case of ejectment, he will probably lose his crop as well as his land.

Power for Court to fix fair rent as alternative to ejectment.

157. When a plaintiff institutes a suit for the ejectment of a trespasser he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent to be determined by the Court, and the Court may grant such relief accordingly.

This is new.

This section is meant to help the landlord who is in doubt whether to treat an occupant as a tenant or a trespasser by authorizing him to claim, in a suit for tres-

pass as alternative relief, a declaration that the defendant is liable to pay for the land rent at a rate to be fixed by the Court. Its provisions follow the case-law on encroachments by tenants. The landlord may elect to treat the occupant either as trespasser or as tenant, but he must do so within twelve years of *open hostile* possession by the occupants if he is a tenant of adjoining lands, or within twelve years of any possession if the occupant is no tenant, for his possession is in its very nature hostile. *See* notes under heading Encroachment, *ante*, pp. 159—163.

Application to determine incidents of tenancy.

158. (1) The Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters, (namely):—

(*a*) the situation, quantity and boundaries of the land;

(*b*) the name and description of the tenant thereof (if any);

(*c*) the class to which he belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not and whether his rent is liable to enhancement during the continuance of his tenure; and

(*d*) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Chapter XXV of the Code of Civil Procedure XIV of 1882 by such Revenue-officer as the Local Government may authorize in that behalf by rule made under section 392 of the said Code.

(3) The order on any application under this section shall have the effect of, and be subject to the like appeal as, a decree.

This is new.

The provisions of this section are meant to be a substitute for those for interchange of pottahs and kabulyats of the former law. The Rent Commission observed :—"Closely connected with this point is the omission from the Draft Bill of any provisions similar to those of the existing law as to ryots being entitled to pottahs, and landlords being entitled to kabulyats, and the procedure for enforcing the rights so declared. We have just observed that very little use has been made of these provisions by those for whose benefit they were intended. This observation was more particularly concerned with their use as a means of reducing to writing the conditions regulating the relation of landlord and tenant. There is, however, another purpose for which they might have been used, that is, as a means to obtain an authoritative settlement of some essential question connected with the tenancy and in dispute between the parties thereto—the rate of rent, for example, or the quantity of land held by the tenant. The landlord may contend that the ryot holds twenty bighas of land, while the ryot declares that he has but fifteen. Year after year the contention is renewed. The landlord threatens a measurement, which the ryot, afraid of a venal *Amin* and a varying pole, desires to avoid. A bribe to the *gomastah* or compliance with some petty cess, defers the final settlement of the question for a year; and the following year it arises again, perhaps deterring the ryot from going to his landlord's *kachari* to pay his rent, lest he should be subjected to a demand, the justice of which he will not admit. Or some fields in the ryot's holding are by him maintained to be second class rice land and assessable with the prevailing or usual rate for land of this class, whilst the landlord avers that they are first class rice land and should pay a higher rent. At every rent day the point is discussed; and an amount of irritation is kept up which is not in harmony with the friendly relations which should exist between a landlord and his tenantry. It is very desirable that facility be afforded for the ready settlement of questions like these which are constantly arising in this country, more especially in consequence of the absence of boundaries and fences and the want of an exact survey upon an uniform standard. It might have been thought that the landlord, in the first case, could easily have the question settled by tendering a pottah and demanding a kabulyat for twenty bighas; and the landlord, in the second case, by tendering a pottah and demanding a kabulyat for the field as first class rice land: but if the land turned out to be nineteen and a half bighas instead of twenty, or one of the fields was found to be of some middle class kind of land, the suit, according to the decision of the highest tribunal in India, must fail, and the parties be sent away, the real question in dispute unsettled, and their feelings roused and embittered by litigation. Thus, these provisions of the existing law have become ineffectual for the only purpose for which the people cared to use them

and for which they might have been beneficially used. While omitting what has been found useless in practice, we have endeavoured to supply the want thus indicated by experience." Accordingly, this section provides that either the landlord or the tenant may apply for the determination of the incidents of the tenancy. Section 10 of the North-Western Provinces Rent Act provides for application for determination of the class of the tenancy. The provisions of this section are more comprehensive and will be very useful when a landlord wants to have the incidents of a single tenancy determined. When the landlord wants to have the incidents of a large number of tenancies in a local area settled, he has to proceed under section 103, *ante*, for a record of rights and settlement of rents. It is scarcely necessary to point out that, though parties may no longer seek the assistance of the Courts for interchange of pottahs and kubulyats, they may now interchange pottahs and kabulyats of their own accord just as well as heretofore.

The Local Government has directed that when a Court directs under sub-section (2) of this section that a local enquiry be held under Chapter XXV of the Code of Civil Procedure, the commission shall be issued to such person, not being below the rank of an Assistant or Deputy Collector, as the Collector of the District may from time to time select for the purpose: the Court shall issue a precept to the Collector, requiring him forthwith to nominate a fit person as above to conduct the enquiry, and the commission shall be issued to the person so nominated. (*See* notification under section 31, *ante*, pp. 105-6.)

Alterations in the procedure of suits for arrears of rent.—The alterations in the law and procedure of suits for the recovery of arrears of rent may be thus summarized :—

(1) The suit shall be brought for the whole rent due for the tenancy; no sharer in joint undivided property is entitled to sue separately for his share of the rent (sec. 188).

(2) No suit shall be brought within three months of a previous suit (sec. 147).

(3) The plaint shall contain the extent and boundaries of the lands of the tenancy, or description sufficient for identification (sec. 148, cl. *b*).

(4) The summons shall generally be for final disposal (sec. 148, cl. *c*).

(5) The defendant cannot file a written statement without permission of the Court (sec. 148, cl. *e*).

(6) When arrears are admitted, and it is pleaded that rent is due to a third person, cognizance shall not be taken of the plea, unless the defendant pays into

Court the arrears (sec. 149); or such reasonable portion of it as the Court directs (sec. 151).

(7) When the plea is, that rent is due but not so much as claimed, cognizance shall not be taken of the plea, unless the defendant pays into Court the admitted arrears (sec. 150); or such reasonable portion of it as the Court directs (sec. 151).

(8) There can be no examination of parties by interrogatories nor any discovery of documents (sec. 148).

(9) Only the substance of the evidence of witnesses shall be recorded (sec. 148, cl. *f*).

(10) Execution may be allowed on oral application of the decree-holder, unless ejectment be also decreed on account of the arrears (sec. 140, cl. *g*).

(11) In execution of the decree, the tenant cannot obtain postponement of sale of any immovable property that has been attached, in order to raise money by mortgage, lease or private sale.

There are other alterations in the procedure of the execution of the decree which only apply when the tenancy is liable to sale for its own arrears and the decree-holder applies to bring the tenancy to sale. These are dealt with in the next Chapter: (*See* the preliminary remarks.)

CHAPTER XIV.

SALE FOR ARREARS UNDER DECREE.

The provisions of this Chapter apply to sales of tenures and holdings in execution of decrees for arrears of their rent. They do not affect enactments relating to *patni* tenures, *in so far as they relate to such tenures* (sec. 195, cl. *e*). *Patni* tenures, therefore, remain saleable without decree under the special procedure of Regulation VIII of 1819, Regulation 1 of 1820, and Act VIII B. C. of 1865.

The peculiar feature of these provisions is that tenancies, sold in execution of decrees for arrears of rent accruing on them, will be put up for sale in the first instance subject to registered and notified "incumbrances," and, if the amount then bid is sufficient to liquidate the arrear, will be sold subject to such incumbrances (sec. 164). If, on the other hand, the amount bid is not sufficient to liquidate the arrear, they will be, on a subsequent day, put up and sold with power to avoid such incumbrances (sec. 165). These provisions apply of their own force only in case of perma-

nent tenures and holdings at fixed rates; but, as there are in some parts of the country, occupancy-holdings of great extent and in most respects similar to tenures, to which it would be reasonable to apply the same rules, the Local Government is empowered to extend the system to occupancy-holdings in any part of the province it thinks fit (sec. 168).

The word "incumbrances" is, however, used throughout in a special sense. When it is said that a tenancy is sold "with power to avoid incumbrances," it is not meant that it will be discharged free of everything that might, in the wide sense of the word, be termed an incumbrance. There are certain interests which will be *always* protected (sec. 159). These are termed "protected interests." Some of these were protected in similar sales under the old law, and others have been added, because such interests, being protected under a sale for arrears of revenue, would seem to be *a fortiori* entitled to protection under a sale for rent.

The result is—(*a*) that the interests which are mentioned in section 160 and called "protected interests," are saved in case of all sales; (*b*) that, in case of sales subject to incumbrances, the protection extends also to incumbrances created by registered deeds, of which a copy has been served on the landlord three months before the accrual of the arrear; and (*c*) that, except as stated in (*a*) and (*b*), the tenancy is sold with power to avoid all liens, sub-tenancies, easements, and other rights or interests created upon it by the tenant in limitation of his own interests.

An incumbrance will not become void *ipso facto* on a sale under this Chapter. It must be annulled by a notice served on the incumbrancer through the Collector within one year after the purchaser first has knowledge of the incumbrance (sec. 167). It is proposed, by separate legislation, to apply a similar rule to the case for arrears of revenue.

When an order for the sale of a tenancy is passed under this Chapter, nothing will stop the sale, unless the amount is paid into Court, or the decree-holder acknowledges that his claim has been satisfied (sec. 170). And at the sale the decree-holder may bid without the permission of the Court, but the judgment-debtor is precluded from bidding (sec. 173). But, when the sale has taken place, the judgment-debtor may, by paying within thirty days of the sale the amount of the decree with five per cent. on the purchase-money, have the sale set aside (sec. 174).

General powers of purchaser as to avoidance of incumbrances.

159. Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests,"

but with power to annul the interests defined in this chapter as "incumbrances":

Provided as follows:—

(*a*) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf;

(*b*) the power to annul shall be exercisable only in manner by this chapter directed.

Old Acts.—Section 16 of Act VIII B. C. of 1865; section 66 of Act VIII B. C. of 1869. They provided: The purchaser of an under-tenure under the provisions of sections 59 and 60 of Act VIII B. C. of 1869 or of section 105 of Act X of 1859 "shall acquire it free of all incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which under-tenure was created, or by the subsequent written authority of the person who created it, his representatives or assignees, provided that nothing herein contained shall be held to entitle the purchaser to eject khudkhast ryots or resident and hereditary cultivators, nor to cancel *bonâ fide* engagements made with ryots or cultivators of the classes aforesaid by any holder of the under-tenure or his representatives, except it be proved in a regular suit to be brought by such purchaser for the adjustment of his rent, that a higher rate would have been demandable at the time such engagement was contracted by his predecessor. Nothing in this section shall be held to apply to the purchase of a tenure by the previous holder thereof, through whose default the tenure was brought to sale."

The above sections did not apply when the decree was given in favor of a sharer in joint undivided property. Under the present Act it would appear that no joint landlord may recover rent by suit (*see* sec. 188 and notes thereunder). The above sections applied only to tenures, the present section applies to holdings as well.

When a tenure or holding is sold in execution of a decree for arrears.—Under section 65, a permanent tenure, a holding at fixed rates and an occupancy-holding are liable to sale in execution of a decree for rent thereof. What is sold is not the right, title and interest of the judgment-debtor but the tenure or the holding. Under the old Acts (sec. 27 of Act X of 1859; sec. 26 of Act VIII B. C. of 1869) permanent tenure-holders were required to register all transfers and

successions in the sherista of the landlord, and the latter therefore *could sell* the whole *tenure* in execution of a decree for rent obtained against the registered tenant (*Hari Charan Bose* v. *Meherenissa Bibi*, 7 W. R. 318; *Sadhan Chandra Bose* v. *Guru Charan Bose*, 15 W. R. 99); and not merely the right, title and interest of the judgment-debtor (*Fatima Khatoon* v. *Syad Besarat Ali*, 13 W. R. 433; *Golam Chandra De* v. *Nadiyar Chand Adhikari*, 16 W. R. 1, *Jeolal Sing* v. *Ganga Prasad*, Ind. 10 Cal. 996). But where it was clear from the proceedings that what *was sold*, was the interest of the judgment-debtor only, the sale was confined to that interest and did not extend to the whole tenure (*Doolar Chand Sahu* v. *Lala Chabil Chand*, L. R. 6 I. A. 47; 3 Cal. 561). If, on the other hand, it appeared that the judgment-debtor had been sued as representing the ownership of the whole tenure, and the sale, though purporting to be of the right and interest of the judgment-debtor only, was intended to be, and in justice and equity ought to operate as, a sale of the tenure, the whole tenure was considered as having passed by the sale: and if the question was a doubtful one on the face of the proceedings, or one part of those proceedings appeared inconsistent with another, the substance of the matter was looked into and not the form or languange of the proceedings (*Bisvesvar Lal Sahoo* v. *Maharaja Lachmisvar Sing*, L. R. 6 I. A. 233, 5 Cal. 477).

The present Act has substituted a system of compulsory official registration and notification to the landlord of transfers of permanent tenures, and extended those provisions to holdings at fixed rates. The rulings under the old Acts, therefore, apply now under modifications. Under the old law, a decree for rent obtained by the landlord against his registered tenant rendered the tenure liable for sale, and the auction-purchaser acquired a valid title to the tenure notwithstanding that the tenure might have passed into other hands than the judgment-debtor, unless the transferee could show that there was sufficient cause for the non-registration of his name (*Syam Chand Kundu* v. *Brajanath Chowdhuri*, 21 W. R. 94). Under the present Act, a transferee without a registered deed acquires no title. But if the notice of a transfer of a permanent tenure or a holding at fixed rates does not reach the landlord through the fault of the Collector's office, a sale of the tenancy in execution of a decree obtained against the old tenant would not give the purchaser a valid title against the new tenant. Further, under this Act, the only penalty against the omission to notify to the Collector a succession to a permanent tenure or a holding at fixed rates is, that the tenure-holder or the raiyat is barred from recovering rent from his tenants by process of law (secs. 16 and 18). Where, therefore, a tenure-holder or a raiyat at fixed rates dies leaving several successors, it will depend upon the circumstances of the case if the landlord, by obtaining a decree for arrears of rent against one or some of them, may bring the tenure or holding to sale and give a perfect title to the purchaser. In case of an occupancy-holding, both the transferor

and the transferee remain liable for rent unless and until the transfer is notified to the landlord (sec. 73). When, therefore, the transfer is not notified, the landlord may give a valid title to the purchaser by bringing the holding to sale in execution of the decree obtained against the old tenant. But when notice is given, it will depend on the transferability or otherwise of the occupancy-holding whether the landlord may give a title to the purchaser of the holding when brought to sale in execution of a decree for rent obtained against the old tenant. If the transfer is valid, the purchaser will acquire no right; if it is invalid, the purchaser will acquire a good title. There is no provision in this Act for notification of succession to an occupancy-holding. A landlord may not, therefore, by proceeding against one of several successors give a good title to the purchaser except when the former represents the whole tenancy; and the latter acquires only the right, title and interest of the former.

In *Massamat Latifan* v. *Sheikh Mia Jan*, 6 W. R. 112, it was held that a tenancy once sold for its own arrears, could not be again put up to sale for arrears due on account of previous period. This decision was followed in *Pran Gour Majamdar* v. *Hemanta Kumari Debi*, Ind. 12 Cal. 597. It was remarked in the former: "Those arrears (*i. e.*, for the previous years) became the personal debt of the former proprietor (*i. e.*, tenant), and must be recovered from him. The tenure itself is *hypothecated for the rent of the current year*, and can only be sold for arrears of the current year." The reason of the decision thus enunciated is not accurate. Section 66 of this Act makes a permanent tenure, a holding at fixed rates, and an occupancy-holding saleable for their own arrears irrespective of the period for which the arrears are due. And under section 163 a permanent tenure or a holding at fixed rates will be sold subject to registered encumbrances notified three months before the arrear falls due, if the bid is sufficient to liquidate the amount of the decree and costs. It is, therefore, doubtful how far the two rulings quoted above will now be considered to be sound law. The safe course for the landlord will be to have the tenure or holding sold in execution of the previous decree and claim the decretal amount under the later decree under clause (*c*) of section 169, from the excess of the sale-proceeds.

Effect of sale when decree is afterwards set aside.—Where a *bonâ fide* sale takes place under a decree which, at the time of the sale, is in force and is valid, the Court in selling the property in execution of it, acts with jurisdiction: and the circumstance that the decree is *afterwards* set aside, on appeal, or an application for review or for revival (if decided *ex parte*) does not vitiate the sale under the decree before reversal (*Jan Ali* v. *Jan Ali Chowdry*, 10 W. R. 154, 1 Beng. A. C. 56; *Chandra Kant Sarma* v. *Bisvesvar Sarma*, 7 W. R. 312; *Pyarimani Dasi*

v. *The Collector of Birbhum*, 8 W. R. 300). But when the sale takes place in execution of a decree which is afterwards pronounced by a competent Court to have been invalid at the time of the sale, *e.g.*, where a decree was obtained on a claim that had been barred by limitation or where the Court acted without jurisdiction, the sale, as well as everything done in the case, falls to the ground (*Golam Asgar* v. *Lakhimani Devi*, 5 Beng. 68, 13 W. R. 273; *Jadu Nath Kundu Chowdry* v. *Braja Nath Kundu*, 6 Beng. App. 90).

With power to annul "incumbrances."—Under the old Acts also, incumbrances were only voidable and not *ipso facto* void. There were a number of rulings to that effect with a consensus of decision till the case of *Annada Charan Das Bisvas* v. *Mathura Nath Das Biswas*, Ind. 4 Cal. 860, 4 Cal. 6, which was followed in *Mohini Chandra Majumdar* v. *Jyotirmay Ghosh*, 4 Cal. 422. The conflict of opinion in these two cases led to a Full Bench reference in *Titu Bibi* v. *Mohesh Chandra Bagchi*, Ind. 9, Cal. 683, which overruled them and upheld the decision of the earlier rulings.

Protected interests.

160. The following shall be deemed to be protected interests within the meaning of this chapter:—

(*a*) any under-tenure existing from the time of the Permanent Settlement;

(*b*) any under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(*c*) any lease of a land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;

(*d*) any right of occupancy;

(*e*) the right of a non-occupancy-raiyat to hold for five years at a rent fixed under Chapter VI by a Court, or under Chapter X by a Revenue-officer;

(*f*) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and

(*g*) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor in title, has expressly and in writing given the tenant for the time being permission to create.

Under the old Acts (1) incumbrances created by the defaulting tenant under powers expressly vested in him by written engagement with his landlord, (2) the right of khudkhast raiyats not to be ejected, and (3) the right of those raiyats to hold at rents engaged, unless it were proved in a regular suit that a higher rent would have been demandable at the time of the engagements, were the only interests that were saved (sec. 16 of Act VIII B. C. of 1865; sec. 66 of Act VIII B. C. of 1869). These now correspond to clauses (*g*), (*d*) and (*f*) of this section. Clause (*a*) corresponds to the protected interests under clauses (1) and (2) of section 37 of the Revenue Sale Act XI of 1859, and the same clauses of section 12 of the Public Demands Recovery Act VII B. C. of 1868; clause (*c*) to clause (4) of those Acts, and clause (*b*) to clause (3) of the latter Act. Clause (*e*) is new.

Under-tenures, mentioned in clause (*a*), as existing from the time of the Permanent Settlement, may have been held at fixed rates or not. The latter are liable to enhancement of rent. Under-tenures mentioned in clause (*b*) recognized at a rent fixed for the period of settlement, are not liable to any enhancement of rent during that period. Though leases of lands mentioned in clause (*c*) are protected, the lands are, under section 167, sub-section (4), in some cases (*i. e.*, where the tenure or holding is sold with power to avoid all incumbrances), liable to enhancement of rent, on proof that "the rent was not fair at the time when the lease was granted, except when the land has been held for more than twelve years at a fixed rent equal to the rent of good arable land. Clause (*d*) protects the occupancy-raiyats from ejectment, and clause (*f*) protects them from enhancement in certain cases. Clause (*e*) protects the non-occupancy-raiyat having a judicial lease fixed by a Court or a Revenue-officer both from ejectment and enhancement. It will be seen that this section does not mention the raiyats at fixed rates. Those of them who are occupancy-raiyats as well are protected under clauses (*d*) and (*f*).

Clause (c).—The benefit of this clause is limited to improvements effected *bonâ fide* and to permanent buildings erected before the sale; it does not extend

to any thing subsequently constructed merely for the purpose of defeating the rights of the auction-purchaser. Subject to this reservation, it does not matter whether the improvements have been effected by the present holder or by some previous occupier (*Asgar Ali* v. *Asmat Ali*, Ind. 8 Cal. 110).

Leases of lands whereon buildings have been erected, gardens planted, &c., are protected whether they were expressly granted for such purpose or not (*Bhago Bibi* v. *Ram Kant Roy Chowdry*, Ind. 3 Cal. 293; *Gobind Chandra Sen* v. *Joy Chandra Das*, Ind. 12 Cal. 329). In the last case the Court observed: "The first point for our consideration is, whether lands on which gardens have been made are protected by Act XI of 1859, sec. 37, from the effect of a sale for arrears of revenue, unless they have been expressly leased for that purpose. No doubt three successive Revenue Sale Laws, Reg. X of 1822, Act XII of 1841 and Act I of 1845, were to this effect, but the language of Act XI of 1859 is different, and is capable of the more liberal interpretation in favor of the tenant. This construction has been adopted by Birch and Mitter, JJ., in unreported special appeal, 1796 of 1876, *Sheikh Joofail Ali* v. *Ram Kant Rai Choudhuri*, and three appeals decided simultaneously, and also by White and Mitter, JJ., in the case of *Bhago Bibi* v. *Ram Kant Roy Choudhri*. We were at one time inclined to doubt the correctness of this opinion, but after examination of proceedings in the Legislative Council, we have come to the conclusion that the alteration in the terms of the law was deliberate, so as to protect all tenants coming within the terms specified."

Meaning of "incumbrance" and "registered and notified incumbrance."

161. For the purposes of this chapter—

(*a*) the term "incumbrance," used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section;

(*b*) the term "registered and notified incumbrance," used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance created by a registered instrument of which a copy has, not

less than three months before the accrual of the arrear, been served on the landlord in manner hereinafter provided.

This is new.

Simple registration of an incumbrance without notification to the landlord does not avail the incumbrancer. It is for arrears falling due three months after such notification, that a tenure or holding at fixed rates so incumbered will be first sold subject to the registered and notified incumbrances (sec. 104); and if it does not fetch sufficient price, then with power to annul such incumbrances (sec. 165). An incumbrance not registered, or registered but not notified, is not protected in any case.

The notice of a registered incumbrance will be served on the landlord in the manner provided by section 176. An incumbrance which was not required to be registered under section 17 of the Registration Act, and which was created before the commencement of this Act may be registered at any time within one year from the commencement of the Act (sec. 175). When the incumbrance has been registered a notification of the incumbrance may be served on the landlord at any time on the application of the incumbrancer. This is done by serving on the landlord a copy of the instrument creating the incumbrance (sec. 176).

Application for sale of tenure or holding.

162. When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree-holder applies under section 235 of the Code of Civil Procedure XIV of 1882 for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the pergana, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

This is new.

Section 5 of Act VIII B. C. of 1865 and section 60 of Act VIII B. C. of 1869 required the particulars mentioned in the latter part of this section to be given in the notice of the sale.

Section 235 of the Civil Procedure Code provides: "The application for the execution of a decree shall be in writing, verified by the applicant or by some other

person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars (namely),—(*a*) the number of the suit; (*b*) the names of the parties; (*c*) the date of the decree; (*d*) whether any appeal has been preferred from the decree; (*e*) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree; (*f*) whether any and what previous applications have been made for execution of the decree, and with what result; (*g*) the amount of the debt or compensation, with the interest, if any, due upon the decree, or other relief granted thereby; (*h*) the amount of costs, if any, awarded; (*i*) the name of the person against whom the enforcement of the decree is sought; and (*j*) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require."

Besides the particulars required under section 235, Civil Procedure Code, the application shall contain a statement showing the pergana, estate and village in which the land of the tenure or the holding is situate. Care should be taken to see that this description on the application is not substantially different from the description that was given in the plaint. Under the old Acts the description in the notice of the sale was required to be specified in the words used in the plaint.

Order of attachment and proclamation of sale to be issued simultaneously.

163. (1) Notwithstanding anything contained in the Code of Civil Procedure XIV of 1882, when the decree-holder makes the application mentioned in the last foregoing section, the Court shall, if under section 245 of the said Code it admits the application and orders execution of the decree as applied for, issue simultaneously the order of attachment and the proclamation required by section 287 of the said Code.

This is new.

Under the Civil Procedure Code, attachment takes place first, and *when the property has been attached*, the Court may order that the whole or any part of it be sold for the satisfaction of the decree (sec. 284). Under the present Act, the attachment of the tenure or holding and the proclamation for its sale will be issued simultaneously, thus securing expedition in sales of tenancies for arrears of rent due thereupon.

(2) The proclamation shall, in addition to stating and specifying the particulars mentioned in section 287 of the said Code, announce—

(*a*) in the case of a tenure or a holding of a raiyat holding at fixed rates, that the tenure or holding will first be put up to auction subject to the registered and notified incumbrances, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances; and

(*b*) in the case of an occupancy-holding, that the holding will be sold with power to annul all incumbrances.

This is new.

The particulars mentioned in section 287 of the Civil Procedure Code, so far as they are applicable, are as follows :—(1) the time and place of the sale ; (2) the property to be sold ; (3) any incumbrance to which the property is liable ; (4) the amount for the recovery of which the property is sold ; (5) and every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property. In case of there being incumbrances on the tenure or holding, it will be necessary to state whether they, or any of them, are registered and notified, and if notified, when they were notified. If it is a holding that is to be sold, it should be stated whether there is any standing crop on it or not, as the crop may add substantially to the price fetched by the holding.

The Rent Commission thus explained the reason of selling the tenancy, in the first instance, subject to registered and notified incumbrances:—

"The object of making sub leases and incumbrances voidable upon the sale of a tenure for arrears of rent, is that the superior landlord's security for his rent may not be impaired. If the sub-leases and incumbrances of a tenure have not absorbed so much of the tenure-holder's profits as to render the interest left him insufficient to meet the rent which he pays to the proprietor

of whom he holds his tenure, if the tenure, subject to these sub-leases and incumbrances, will sell for a sum sufficient to satisfy any decree that can be passed for arrears of the rent payable by the tenure-holder, it cannot be said that the proprietor-landlord's security for his rent has been impaired so far as to bring the case within the above object. The right of sub-letting and creating incumbrances belongs to every tenure-holder—such is the common law of the country. So long as the landlord is certain of the rent to which he is entitled, he cannot justly complain of the exercise of this right or claim to interfere with it. When, however, the exercise of the right extends so far as to endanger the landlord's rent, to impair the security for such rent afforded by the sale of the tenure by public auction, the case is altered, and the landlord may reasonably demand that these sub-leases and incumbrances be avoided, which have rendered the remaining interest of the tenure-holder an insufficient security for the rent payable by him.

"In this view of the matter, we have enacted that a tenure, under-tenure or occupancy-holding about to be sold in execution of a decree for arrears of its own rent, shall first be put up to auction, subject to certain incumbrances, and if the sum bid is sufficient to liquidate the amount of the decree and costs, shall be sold subject to such incumbrances. If the highest amount bid is not sufficient to liquidate the decree, the decree-holder, that is, the landlord, may then claim to have the tenure, &c., sold free of incumbrances. Such sale is not to be had immediately, but upon a subsequent sale-day not less than fifteen or more than thirty days afterwards; and a notification of such tenure being about to be offered for sale free of incumbrances must be posted upon some conspicuous place upon the land of the tenure. The effect of these provisions will be that persons who hold sub-leases and incumbrances will not be endamaged if the bidding on the first sale-day reaches an amount sufficient to satisfy the decree, and the tenure is in consequence sold subject to incumbrances. If, on the other hand, the bidding on the first sale-day does not reach an amount sufficient to satisfy the decree, such persons will have time to protect themselves from injury by paying in the amount of the decree (which they can subsequently recover from the defaulter) and so preventing such a sale of the tenure as will avoid incumbrances."

The Rent Commission recommended that occupancy-holdings also should be first sold subject to registered and notified incumbrances. But that recommendation was not accepted. The following from the Statement of Objects and Reasons that accompanied Bill No. I explains the modification :—"Among the objections to the scheme thus propounded by the Commissioners was one to the effect that it was unsuited to the case of occupancy-holdings. This objection is admitted by

Mr. Reynolds and by the Government of Bengal to be, as a rule, well-founded, inasmuch as an ordinary occupancy-holding is not likely to be saddled with incumbrances which should be respected at a sale. It appears, however, that there are, in some parts of the country, occupancy-holdings of large extent, the land of which is sub-let on such terms, that the interest of the lessee is of considerable value. Under these circumstances, the proper course appears to be that proposed by the Government of Bengal, namely, that occupancy-holdings should, as a rule, be sold at once with power to annul all incumbrances, but that the Local Government should have power to direct that the occupancy-holdings in any local area should be, in the first instance, put up subject to incumbrances as if they were tenures; and it is on these lines that the present Bill is drawn."

(3) The proclamation shall, besides being made in the manner prescribed by section 289 of the said Code, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding ordered to be sold, and shall also be published in such manner as the Local Government may, from time to time, direct in this behalf.

Old Acts.—Section 4 of Act VIII B. C. of 1865; section 59 of Act VIII B. C. of 1869.

Section 289 provides that "the proclamation shall be made in manner prescribed by section 274 (*i. e.*, by beat of drum or other customary mode), on the spot where the property is attached, and a copy thereof shall then be fixed up in the Court-house. * * * If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale."

The Local Government has directed that "the proclamation shall, in addition to the places prescribed in section 163 (3) of the Bengal Tenancy Act and in section 289 of the Code of Civil Procedure, be also published in the *Mal Kachari*, or rent-office of the estate and at the local thana." (Notification, dated 20th February, 1886.)

Thus the sale-proclamation shall be published by beat of drum or other customary method on the spot where the tenure or holding is situate: and copies of the sale-proclamation shall be fixed up (1) in a conspicuous place of the tenure or holding, (2) in the *Mal Kachari*, or rent-office of the estate, (3) in the local thana, and (4) in the Court-house of the Judge ordering the sale. Under the old Acts, copies of sale-proclamation had to be fixed up (1) in the Court-house, (2) in the

Judge's Court, (3) in the Collector's Court, (4) on the tenure, and (5) in the nearest town or village.

It is clear from this sub-section that the Legislature understood section 289 of the Civil Procedure Code *not* to require a copy of the sale-proclamation to be affixed in a conspicuous place on the land. In *Kalitara Choudhurani* v. *Ram Kumar Gupta*, Ind. 7 Cal. 466, the counsel for the appellant contended for the same construction of section 289, but the Court held that it was necessary under section 289 to affix a copy of the sale-proclamation on the property. The provisions of this sub-section makes the necessity of fixing a copy of the proclamation on the property in a sale of a tenure or holding for its own arrear, independent of any construction of section 289 of the Civil Procedure Code.

(4) Notwithstanding anything contained in section 290 of the said Code, the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold.

This is new.

Section 290 of the Civil Procedure Code provides that no sale of immovable property shall, without the written consent of the judgment-debtor, take place until after the expiration of 30 days calculated from the date on which the copy of the proclamation has been fixed up *in the Court-house of the Judge ordering the sale.* Under this section the sale cannot take place without such consent, before 30 days have elapsed from the date on which the copy of the proclamation has been fixed up *on the land of the tenure or holding.*

This sub-section probably proceeds on the construction of section 289 adopted by the Legislature and pointed out under sub-section (3). It would appear that if a copy of the sale-proclamation be fixed up on the property thirty days before the date of sale but that in the Court-house later, the sale will be regular.

Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.

164. (1) When a tenure or a holding at fixed rates has been advertised for sale under the last foregoing section, it shall be put up to auction, subject to registered and notified incumbrances; and, if the bidding reaches a sum sufficient to

liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

This is new.

When a sale takes place under this section the purchaser may annul only incumbrances which are not "registered and notified." But he must follow the procedure of section 167 and may not otherwise annul any incumbrance.

When part of the arrears for which a tenancy is sold subject to "registered and notified incumbrance" fell due three months before an incumbrance was registered and notified to the landlord and the remainder fell due after that time, it is not expressly provided if the purchaser may annul such incumbrance. For part of the arrears, such an incumbrance is not a "registered and notified" one, for another part it is so; and it would appear that the addition of the latter part of the claim would not take away the purchaser's right to annul the incumbrance.

Sale of tenure or holding with power to avoid all incumbrances, and effect thereof.

165. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under the last foregoing section does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under section 289 of the Code of Civil Procedure XIV of 1882, announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by section 167, and not otherwise, annul any incumbrance on the tenure or holding.

This is new.

The period between the first and the second sale will be not less than fifteen days, thus giving time to registered and notified incumbrancers time to pay up the decretal amount and protect their interests. The second proclamation will be published only in accordance with section 289 of the Civil Procedure Code.

A purchaser under this section may annul all incumbrances whether "registered and notified" or not. But he must follow the procedure of section 167, and may not otherwise annul any incumbrances.

Sale of occupancy-holding with power to avoid all incumbrances and effect thereof.

166. (1) When an occupancy-holding has been advertised for sale under section 163, it shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by the next following section, and not otherwise, annul any incumbrance on the holding.

This is new.

Procedure for annulling incumbrances under the foregoing section.

167. (1) A purchaser having power to annul an incumbrance under any of the foregoing sections and desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Collector an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made to

the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure or holding is sold in execution of a decree for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in section 160, clause (*c*), the purchaser may, if he has power under this chapter to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

This is new.

This section relates to the manner in which incumbrances have to be annulled, if the auction-purchaser is so desirous. The right has to be exercised within one year from the date of the sale, unless he had no notice of the incumbrance at the time of the sale, when the right may be exercised within one year from the time of his having such notice.

Sub-section (4) has been introduced at the instance of the Hon'ble P. M. Mukherjee. He pointed out that clause (*c*) of section 160 protected not only leases granted for building or manufacturing purposes at a fair rate of rent, but also leases of land on which buildings, &c., had been erected, perhaps without the consent of the landlord and reserving, it might be, only nominal rents. It thus gave a tenure-holder the power of creating leases in favor of his relatives and dependents which might absorb the whole profits of the tenure, and then of putting the tenure up to sale for the purpose of entrapping unwary purchasers. To guard against this danger sub-section (4) was enacted after section 13 of Act VII B. C. of 1868.

168. (1) The Local Government may, from time to time, by notification in the official Gazette, direct that occupancy-holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of decrees for rent due on them shall, before being put up with power to avoid all incumbrances, be put up subject to registered and notified incumbrances, and may by like notification rescind any such direction.

Power to direct that occupancy-holdings be dealt with under foregoing sections as tenures.

(2) While any such direction remains in force in respect of any local area, all occupancy-holdings, or, as the case may be, occupancy-holdings of the specified class in that local area, shall, for the purposes of sale under the foregoing sections of this chapter, be treated in all respects as if they were tenures.

This is new.

The Local Government has not yet exercised the power of directing that occupancy-holdings or any specified class of occupancy-holdings in any local area shall be sold at first subject to registered and notified incumbrances.

169. (1) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure XIV of 1882, shall be observed, that is to say:—

Rules for the disposal of the sale-proceeds.

(*a*) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;

(*b*) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;

(*c*) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder there-

from any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the sale;

(*d*) the balance (if any) remaining after the payment of the rent mentioned in clause (*c*) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (*c*), the Court shall determine the dispute, and the determination shall have the force of a decree.

This is new.

The reason why the provisions of section 295, Civil Procedure Code, are not applicable to the disposal of sale proceeds when a tenure or holding is sold for its own arrears, is that the arrears are a first charge on the tenancy (sec. 65). The balance mentioned in clause (*d*) of sub-section (1) may be disposed of under the rules of section 295, Civil Procedure Code, which provides :—

"Whenever assets are realised by sale or otherwise in execution of a decree, and more persons than one have, prior to the realisation, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realisation, shall be divided rateably among all such persons :

"Provided as follows :—

"(*a*) When any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale :

"(*b*) When any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold :

"(c) When immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of the sale shall be applied—

"*First*,—in defraying the expenses of the sale;

"*Secondly*,—in discharging the interest and principal money due on the incumbrance;

"*Thirdly*,—in discharging the interest and principal moneys due on subsequent incumbrances (if any); and

"*Fourthly*,—rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.

"If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

"Nothing in this section affects any right of the Government."

The determination of the subsequent rent from the date of the institution of the suit to the date of sale, is to have the force of a decree. It would thus be appealable or not in the same manner as if it were a decree for rent in a regular suit, and the provisions of section 153, *ante*, apply.

Date of sale.—These words in sub-section (1), clause (c) would appear to mean the date of confirmation of the sale. Under section 316 of the Civil Procedure Code, the title of the purchaser commences from the date of such confirmation. And therefore his liability ought also to commence from the same date.

Tenure or holding to be released from attachment only on payment into Court of amount of decree with costs, or on confession of satisfaction by decree-holder.

170. (1) Sections 278 to 283 (both inclusive) of the Code of Civil Procedure XIV of 1882 shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

This is new.

Sections 278 to 283 of the Civil Procedure Code deal with claims to attached properties and their disposal. Under the old Acts, a third party claiming to hold the tenancy under the decree-holder could prefer a claim, but the sale was not to be post-

poned till he deposited in Court the amount of the decree or gave sufficient security (sec. 106 of Act X of 1859; sec. 63 of Act VIII B. C. of 1869; *Golam Chandra De* v. *Nadiyar Chand Adhikari*, 16 W. R. 1). Under the present Act, no claim can be preferred either by a person claiming to hold the tenancy under the decree-holder or by one claiming to hold it against him. The remedy open to both of them is now the same. They may proceed after the sale under section 335 of the Civil Procedure Code, or they may bring a regular suit to set aside the sale. Section 335 provides that if, in delivering possession of immovable property sold in execution of a decree, any person, other than the judgment-debtor, claiming in good faith a right to the present possession thereof, is dispossessed, the Court, on his complaint, shall enquire into the matter of the dispossession and pass such order thereon as it thinks fit and subject to a regular suit, if any, the order shall be final. If a landlord brings to sale a tenancy for its own arrears in execution of a decree against the old tenant, when he is bound to recognize a new tenant or when he has recognized him, a suit lies to set aside the sale and restore the new tenant to his rights (*Ram Sundar Paramanik* v. *Prasanna Kumar Bose*, 5 W. R. X. 22). So a suit lies when the decree-holder *fraudulently* includes in the sale lands other than those of the tenancy (*Aghorlal Samant* v. *Jnananand Ray*, 6 W. R. X. 11).

(2) When an order for the sale of a tenure or holding in execution of such a decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

This is new.

(3) The judgment-debtor or any person having in the tenure or holding any interest voidable on the sale, may pay money into Court under this section.

Old Acts.—First portion of section 6 of Act VIII B 1 the same of section 62 of Act VIII B. C. of 1869.

Any person having an interest.—Under the old Acts, when an under-tenure had been transferred, but the transfer was not registered in the sherista of the landlord, the transferee was, nevertheless, entitled, as a person interested in the

protection of the tenure to stop its sale in execution of a decree for arrears, by paying into Court the amount of the decree (*Anandalal Mukherjee* v. *Kalikaprasad Misser*, 20 W. R. 59). Under the present Act, a voluntary transfer of a permanent tenure or holding at fixed rates may only be made by a registered instrument. It would appear that a transferee, without a registered conveyance, acquires no interest in the tenure or holding at fixed rates. If it is so, such a transferee has now no right to pay money into Court to avert the sale. But a transferee of an occupancy-holding, who has not given notice under section 73, has a right to make the payment into Court and release the holding. Successors to a holding or a tenure have likewise the same right.

Amount paid into Court to prevent sale to be in certain cases a mortgage-debt on the tenure or holding.

171. (1) When any person having, in a tenure or holding advertised for sale under this chapter, an interest which would be avoidable upon the sale, pays into Court the amount requisite to prevent the sale,—

(*a*) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per centum per annum and secured by a mortgage of the tenure or holding to him;

(*b*) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and

(*c*) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

Old Acts.—Last portion of section 6 of Act VIII B. C. of 1865; the same of 62 of Act VIII B. C. of 1869:—which made the provisions of section 13 of Regulation VIII of 1819 applicable to similar payments under the Acts. This section replaces clause 4 of section 13 of the Regulation. Sub-section (2) is new.

Amount requisite to prevent the sale.—When the tenancy was sold, because the amount paid was not sufficient to liquidate the arrears, it was held that the inferior tenant had no rights under section 13 of Regulation VIII of 1819 (*Mirza Mahamad Hossain Ali* v. *Sheikh Bakaoolla*, 6 W. R. 84). But if the amount was credited in favor of the superior tenant and allowance made for it when the arrears were paid to the landlord from the sale proceeds, he could recover the amount from the superior tenant.

Pays into Court.—In the last case cited (6 W. R. 84), it was further held that the amount must be "*paid into Court*" in order that the inferior tenant may claim the rights under section 13 of Regulation VIII of 1819. It was, however, pointed out in *Tarini Debi* v. *Shama Charan Mitter*, Ind. 8 Cal. 954, that it was not possible to construe the words "paid into Court" in their strict literal sense. For, in sales of patni tenures, the arrears could only be paid to the *Collector* to avert the sale and not to *any Court*.

Sub-section (1), clause (b).—So it has been held in the recent case of *Lala Bhairub Chandra Karpur* v. *Lalit Mohan Sing*, Ind. 12 Cal. 185, that a person who enters into possession of a tenure as mortgagee under the provisions of section 13 of Regulation VIII of 1819, is bound, in the first place, to pay the rent due to the landlord out of the collections before applying the same to the liquidation of his own debt, and the defaulter is not to be liable for the rent of the tenure during the period of the possession by the person so holding it as mortgagee. (*See* also *Kanye Lal Sett* v. *Nistarini Dasi*, Ind. 10 Cal. 443.)

Sub-section (1), clause (c).—Under section 13, clause 4 of Regulation VIII of 1819, possession may be had by the person making the payment on *application* to the Collector; and the defaulter may recover possession either by paying the whole amount paid with interest at 12 per cent. or by proving *in a regular suit* that the whole amount so advanced with interest has been realized from the usufruct of the tenancy. This section does not lay down the procedure to be adopted in either case. It would appear that in both cases parties should have recourse to regular suits.

Sub-section (2).—The provision of this sub-section is according to the ruling in *Ambika Debi* v. *Pranhari Das*, 4 Beng. F. B. 77, where it was held that an under-tenant who had saved the superior tenure from sale by depositing the amount of arrear of rent due, not only had the security of the tenure which he preserved, and of which he could obtain possession, but had also a right to recover the amount deposited by him as a loan in an ordinary suit. This decision overruled that in *Kartick Sarma* v. *Baidya Nath Saini*, 10 W. R. 205, where it was held that the under-tenant's remedy was restricted to his taking possession of the tenancy and satisfying his debt.

Inferior tenant paying into Court may deduct from rent.

172. When a tenure or holding is advertised for sale under this chapter in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Old Acts.—Last portion of section 6 of Act VIII B. C. of 1865; the same of section 62 of Act VIII B. C. of 1869:—which made the provisions of section 13 of Regulation VIII of 1819 applicable to similar payments under the Acts. This section replaces clause 3 of section 13 of the Regulation.

Under this section, the amount paid may be deducted either from previous arrears or from future arrears. (See *Nobo Gopal Sarkar* v. *Srinath Bandopadhyaya*, Ind. 8 Cal. 877).

Pays into Court.—In *Tarini Devi* v. *Shama Charan Mitter*, Ind. 8 Cal. 954, it was held that when a inferior tenant *paid money to a superior landlord* to avert the sale of the intermediate tenancy, he was entitled to deduct the amount so paid from any rent due from him to the intermediate tenant.

Decree-holder may bid at sale; judgment-debtor may not.

173. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure XIV of 1882, the holder of a decree in execution of which a tenure or holding is sold under this chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree-holder or

any other person interested in the sale, by order set aside the sale, and the costs of the application and order, and any deficiency of price which may happen on the resale, and all expenses attending it, shall be paid by the judgment-debtor.

This is new.

Sub-section (1).—Under section 294 of the Civil Procedure Code, the decree-holder may not bid for or purchase, without the express permission of the Court, property sold in execution of his decree. This sub-section enacts an exception to that rule in the case of *a tenure or holding being sold for its own arrears.* If any other property is sold in execution of a rent-decree besides the tenure or holding, the decree-holder may not purchase, as formerly, without the permission of the Court.

Sub-section (2).—Under the old Acts, the judgment-debtor could purchase, but he could not avoid any incumbrances (sec. 16 of Act VIII B. C. of 1865; sec. 66 of Act VIII B. C. of 1869). Now the judgment-debtor is altogether precluded from purchasing the tenure or holding in arrears. A judgment-debtor bidding for or purchasing his tenure or holding sold in execution of its own arrears, would now render himself liable to be punished, under section 185 of the Indian Penal Code, with imprisonment extending to one year, or with fine extending to Rs. 100, or with both.

Application by judgment-debtor to set aside sale.

174. (1) Where a tenure or holding is sold for an arrear of rent due thereon, then, at any time within thirty days from the date of sale, the judgment-debtor may apply to have the sale set aside, on his depositing in Court, for payment to the decree-holder, the amount recoverable under the decree with costs, and, for payment to the purchaser, a sum equal to five per centum of the purchase-money.

(2) If such deposit is made within the thirty days, the Court shall pass an order setting aside the sale, and the provisions of section 315 of the Code of Civil Procedure XIV of 1882 shall apply in the case of a sale so set aside:

Provided that, if a judgment-debtor applies under section 311 of the Code of Civil Procedure XIV of 1882 to set aside

the sale of his tenure or holding, he shall not be entitled to make an application under this section.

(3) Section 313 of the Code of Civil Procedure XIV of 1882 shall not apply to any sale under this chapter.

This is new.

Sub-sections (1) and (2) provide a new relief to the judgment-debtor; and he may within thirty days from the date of sale avoid the sale if he pays into Court the amount of the decree and costs, together with a compensation of 5 per centum on the purchase-money. This relief is irrespective of any irregularity in publishing or conducting the sale and substantial injury to the judgment-debtor, and may be had even if there were neither irregularity nor injury.

Section 315 of the Civil Procedure Code provides that when a sale is set aside, the purchaser shall be entitled to receive back his purchase-money from any person to whom the purchase-money has been paid; and that the repayment of the said purchase-money and of any interest allowed by the Court may be enforced against such person under the rules for the execution of a decree for money.

The sale of a tenure under the Rent Law in execution of a decree for its own arrears is liable to be cancelled on the ground mentioned in section 311 of the Civil Procedure Code (*Azizunnessa Khatun* v. *Gora Chand Das*, Ind. 7 Cal. 163). Section 311 provides that the decree-holder or any person whose immovable property has been sold may apply to set aside the sale on the ground of a material irregularity in publishing or conducting it; but no sale shall be set aside unless the applicant satisfies the Court that he has sustained substantial injury on account of such irregularity.

The proviso to sub-section (2) enacts that the judgment-debtor cannot avail of both the provisions of section 311, Civil Procedure Code and of this section. If he elects to proceed under the former, he is disentitled to claim relief under the latter.

It has been held that the words "any person whose immovable property has been sold" are not restricted to the judgment-debtor alone (*Krishnarav Venkatish* v. *Vasudev Anant*, 11 Bomb. 15). But they do not include a person who has purchased the same property at a prior sale, such sale not having been confirmed (*Bhagavati Charan Bhattacharjee* v. *Biswesvar Sen*, Ind. 8 Cal. 367).

The plaintiff purchased under a private conveyance from the registered tenant of a permanent transferable interest in land, such as was described in section 26 of Bengal Act VIII of 1869; but no notice of the transfer was given to the zemindar. The zemindar subsequently brought a suit against the tenant for the arrears of rent,

and obtained a decree, in execution of which he caused the tenure to be sold, and himself became the purchaser. The plaintiff took proceedings under section 311 of the Civil Procedure Code to set aside the sale, but his application was rejected on the ground, an erroneous one, that he was not a proper party to take such proceedings, and he did not appeal against the order rejecting it. *Held*, in a suit brought against the zemindar and the tenant to set aside the sale, that in the absence of fraud the suit was not maintainable. The plaintiff might have satisfied the rent-decree and so prevented the sale, or he might have appealed against the order rejecting his application to set aside the sale; but having done neither, and the zemindar having had no notice of the transfer, the plaintiff was not entitled to treat the proceedings in the rent suit as a nullity on the ground that he was not a party to that suit. (*Panai Chandra Sarkar* v. *Hara Chandra Choudhuri*, Ind. 10 Cal. 496).

Section 313, Civil Procedure Code, provides that the purchaser may apply to the Court to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein. The purchaser of a tenure or holding in execution of a decree for its own arrears is precluded from making such an application. If the judgment-debtor had really no interest in the holding, and if the landlord fraudulently obtained a decree against him, when he was bound to recognize another person, such person must proceed under section 335 of the Civil Procedure Code or have the sale set aside in a regular suit. And if he does not do so, the right of the purchaser remains valid.

Registration of certain instruments creating incumbrances.

175. Notwithstanding anything contained in Part IV of the Indian Registration Act III of 1877, an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act, and is not required by section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

This is new.

Notification of incumbrances to landlord.

176. Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an incumbrance on the tenure or

or holding, shall, at the request of the tenant or of the person in whose favor the incumbrance is created, and on payment by him of such fee as the Local Government may fix in this behalf, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

This is new.

The copy of the instrument will be served on the landlord in accordance with the Local Government Rules printed under section 16, p. 59, *ante*. The process-fee shall be 12 annas if directed to one or more persons of the same village; and if the persons be residents of different villages, a fee of 12 annas shall be levied for service in each village.

Power to create incumbrances not extended.

177. Nothing contained in this chapter shall be deemed to enable a person to create an incumbrance which he could not otherwise lawfully create.

This is new.

CHAPTER XV.

CONTRACT AND CUSTOM.

Restrictions on exclusion of Act by agreement.

178. (1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act—

(*a*) shall bar in perpetuity the acquisition of an occupancy-right in land, or

(*b*) shall take away an occupancy-right in existence at the date of the contract, or

(*c*) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or

(*d*) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and a tenant since the 15th day of July, 1880, and before the passing of this Act shall prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

(*a*) prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land;

(*b*) take away or limit the right of an occupancy-raiyat to use land as provided by section 23;

(*c*) take away the right of a raiyat to surrender his holding in accordance with section 86;

(*d*) take away the right of a raiyat to transfer or bequeath his holding in accordance with local usage;

(*e*) take away the right of an occupancy-raiyat to sub-let subject to and in accordance with the provisions of this Act;

(*f*) take away the right of a raiyat to apply for a reduction of rent under section 38 or section 52;

(*g*) take away the right of a landlord or a tenant to apply for a commutation of rent under section 40; or

(*h*) affect the provisions of section 67 relating to interest payable on arrears of rent:

Provided as follows:—

(i) nothing in this section shall affect the terms or conditions of a lease granted *bonâ fide* for the reclamation of waste land, except that, where, on or after the expiration of the term created by the lease, the lessee

would under Chapter V be entitled to an occupancy-right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;

(ii) when a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy-right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat;

(iii) nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of orchard land with agricultural crops.

This is new.

This section collects together all the provisions which the Legislature considered necessary to enact in limitation of contract. It was of great importance to prevent the occupancy-raiyat to contract himself out of rights which were essential to his status, and which he would not give up except under the pressure of absolute necessity.

The Government of India, writing to the Secretary of State for India, observed: "Such is the power of the zemindars, so numerous and effective are the means possessed by most of them for inducing the raiyats to accept agreements which, if history, custom, and expediency be regarded, are wrongful and contrary to good policy, that to uphold contracts in contravention of the main purpose of the Bill would be, in our belief, to condemn it to defeat and failure. It is absolutely necessary that such contracts should be disallowed: and, in this conclusion, we have the support, not only of the Bengal Government, but also of the almost unanimous opinions of the Bengal officers."

These restrictions to contracts are divided into three classes: the first, referring to all contracts past or future; the second, to quite recent contracts, and the third, to future contracts only. In the first class are placed only those contracts which bar in perpetuity the accrual of occupancy-rights, or destroy occupancy-rights already in

existence, or allow ejectment without process of law, or prohibit improvements. The second class deals with contracts, purporting to bar the accrual of occupancy-rights during a particular tenancy, and in this class it was decided not to go behind the 15th of July, 1880—the date on which the Government published the Rent Commission's Report and Bill. It may be fairly said that any contracts, made subsequent to that date, have been made in order to defeat impending legislation, and they should not be given effect to. In the third class, which only restricts future contracts, the general statement has been simply put in the legal form, that neither the accrual of the occupancy-right nor the enjoyment of the more important incidents attached to that right shall hereafter be defeated by stipulations in a lease.

Leases relating to waste land, are, however, excepted from these restrictions. They are left wholly to contract, except that nothing in the lease shall operate so as to destroy an occupancy-right which has grown up during the lease. And, if waste land has been reclaimed by the landlord himself and then leased out, the raiyat will acquire no occupancy-right in it for the first thirty years of such leasing out, if a stipulation to that effect is made in the contract. These exceptions are meant to encourage reclamation by landlords.

There is another exception to the restrictions enacted by this section, and that is in favor of contracts regarding temporary cultivation of orchard land with agricultural crops.

Waste land.—There is no definition of "waste land" in this Act, and it was proposed to add an explanation to this section to the effect "that the breaking up of fallow lands for cultivation shall not be deemed to be reclamation of waste land under this section." It was, however, considered that the use of the term "waste land" was sufficient; and that the Courts will put the same construction upon it, as they do under the waste land rules. Provisos (1) and (2) are intended to apply to only *bonâ fide* waste lands.

Permanent mukarrari leases.

179. Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently-settled area from granting a permanent mukarrari lease on any terms agreed on between him and his tenant.

Old Acts.—Section 2 of Regulation V of 1812; section 2 of Regulation XVIII of 1812.

These Regulations gave the proprietors the power of granting leases, "even for perpetuity," on any terms they considered proper.

The same power has all along been exercised by permanent tenure-holders, and this section now expressly recognizes their power.

Utbandi, chur and dearah lands.

180. (1) Notwithstanding anything in this Act, a raiyat—

(*a*) who in any part of the country where the custom of útbandi prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(*b*) who holds land of the kind known as chur or dearah,

shall not acquire a right of occupancy—

in case (*a*), in land ordinarily held under the custom of útbandi and for the time being held under that custom, or

in case (*b*), in the chur or dearah land,

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to raiyats holding land under the custom of útbandi in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the Civil Court, declare that any land has ceased to be chur or dearah land within the meaning of this section, and thereupon all the provisions of this Act shall apply to the land.

This is new.

Utbandi tenancy.—The útbandi tenancy prevails in the District of Nadiya. "It is a tenancy from year to year and sometimes from season to season, the rent

being regulated not by a lump payment in money for the land cultivated, but by the appraisement of the crop on the ground and according to its character. So far it resembles the crop appraisement of the bhaoli system; but there is this marked difference, that while in the latter the land does not change hands from year to year, in the former it may." (*Bengal Government's letter to the India Government*, 15*th September*, 1884.) "The general custom is for the husbandman to get verbal permission to cultivate a certain amount of land in a particular place at a rate agreed upon. While his crop is on the ground, the land is measured and the rent is assessed on it." (*Hunter's Statistical Account*, *Nadiya*.) "There exists in the District of Kishnagar a custom under which tenants can cultivate land which is not directly let out to other tenants but remains *khas khamar*, on payment of certain high rates of rent. In the case of such tenants there exists an implied agreement between the parties, that such rent shall be paid; and the amount of land so cultivated and the rent to be paid for it are ascertained each year by actual measurement. The lands in question are called *utbandi* lands and the rents are calculated at *atbandi* rates." (*Mirzan Biswas* v. *Hills*, 3 W. R. X. 159).

It was held under the old law that when by the custom of the particular locality rent was payable when the land could be cultivated, and not payable where the land was not culturable, and the raiyat paid rent for the period that he could cultivate, and did not pay for the period when he could not cultivate the land, he was to be considered as having held and as having paid the rent sufficiently to come within the meaning of the law and acquire the right of occupancy (*Premanand Ghosh* v. *Surendra Nath Roy*, 20 W. R. 329). The law would appear to remain the same under this Act.

Under the provisions of this section, a settled raiyat does not at once acquire occupancy-right in *utbandi* land let out to him. He must hold the same *utbandi* land for twelve continuous years before he can acquire an occupancy-right. Further, the provisions of Chapter VI does not apply to him. His rent may therefore be enhanced by an unregistered agreement. And if he does not agree to the rent demanded, or if the landlord otherwise so desires, he may be ejected on reasonable notice. But the ejectment must be in execution of a decree (sec. 89). He may be ejected also for arrears of rent due at the end of the Bengali year (sec. 66). And when he is ejected he may claim compensation under section 82.

Chur and dearah land.—Chur and dearah have not been explained under this Act. To prevent formations of old date being included in chur or dearah to the prejudice of the rights of raiyats, sub-section (3) empowers the Collector, on the application of the landlord or the raiyat, or on a reference from the Civil Court,

to declare that any specified land has ceased to be chur or dearah. Land ceases to be chur or dearah when it is fully formed and passes from a condition of sterility to one of fertility. So long as the land does not cease to be chur or dearah, the raiyat, though he may be a "settled raiyat" within the meaning of this Act, does not acquire a right of occupancy in it until he has held the same land for a continuous period of twelve years. It will be noted that sub-section (2) only relates to utbandi land. It would therefore appear that Chapter VI applies to raiyats of chur or dearah lands. The status of the raiyat before he acquires an occupancy right would thus appear to be that of a non-occupancy raiyat. His rent may not be enhanced but by a registered agreement. Nor may be ejected for refusal to pay any rent that is demanded of him. But a fair and equitable rent shall be fixed by the Court. On refusing to pay such judicial rent he may be ejected. But the ejectment must be in execution of a decree (sec. 66). And when he is ejected he may claim compensation (sec. 82).

Halhasili tenany.—Bill No. II excepted halhasili tenancies from the operation of this Act in the same way as it excepted the utbándi tenancies. But, from informations furnished, it was found that they were well advanced in the transition stage to ordinary raiyati holdings, and were not always distinguishable from occupancy-holdings. Under these circumstances it was considered desirable to avoid impeding their transition as much as possible. And, at the recommendation of the Bengal Government, it was decided to withdraw these tenancies from special provisions and to let the ordinary provisions of the Act apply to them.

The ordinary meaning of the term halhasili is that rent is charged only for the actual area cultivated, and sometimes according to the crop raised in each year. The system is liable to variation in different localities. In North Bhagulpore the raiyats hold fixed area of land but pay in each year only for the area cultivated in that year. The lands are either inferior high lands or low lands liable to be submerged frequently. The former owing to the poverty of the soil have to be left fallow for a year or two to allow them to recover; and the latter, while under water, cannot be cultivated. The cultivated lands are measured every year, and rent charged at prevailing rate for the class. No allowance is made for partial failure. In Purneah halhasili tenants have to pay rent only for the lands actually cultivated in each year. Measurements are effected yearly to ascertain the rent payable. Formerly rates varied with actual crops grown; now this has nearly gone out of use, and one rate prevails for all crops. In some cases, where raiyats hold considerable areas (usually limited by boundaries only), they retain a lien on the whole area, while they only pay rent for the portion actually cultivated. In Malda two kinds of halhasili system prevail. About Mathurapore the tenants take a lease of a specified area of land, for which they are bound to

pay a specified rent for the rabbi crop, whether cultivated or not; and an additional rent at a specified rate is charged for such lands of the holding upon which a second or bhadoi crop is grown; but rent for such second crop is not chargeable if the raiyat chooses not to grow it. About Chanchal, in the north of Maldah, the halhasili system, as involving exchange of lands by individual raiyats, at least once every three years, if not oftener, prevails. But the tendency has grown up to retain continuously under cultivation the most favored qualities of land, either as to situation or fertility, and only exchange the more distant and less fertile lands. If the land not required for the cultivation of the season is remote from the bank of a river, the zemindar at once resumes it on the tenant ceasing to use it. If it is near a river, the tenant does not give up his lien, but has to pay the zemindar a small rental on each bigha of the unused land.

Section 183 saves the peculiar incidents that may by custom attach to halhasili tenancies.

Saving as to service-tenures.

181. Nothing in this Act shall effect any incident of a ghâtwâlí or other service-tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of this Act, was not capable of being transferred or bequeathed.

This is new.

Service lands.—When the East India Company received the Dewani of the three provinces of Bengal, Behar and Orissa, many of the greater zemindars, within their respective zemindaris, were entrusted with rights, and charged with duties, which properly belonged to the Government. They had authority to collect from the raiyats a certain portion of the gross produce of the lands. They, in many cases, imposed taxes and levied tolls and increased their income by fees and perquisites. On the other hand, they were bound to maintain peace and order, and administer justice within their zemindaris, and for that purpose they had to keep up courts of civil and criminal justice, and to employ *Kazis*, *Kanungos*, and *Thanadars* (police force). But while, as against the raiyats and other inhabitants within their territories, many of these potentates exercised almost regal authority, they were, as against the Government, little more than stewards or administrators. The amount of their annual payments to Government was an arbitrary sum fixed by Government officers, calculated upon the gross produce of the zemindary from all sources, after making an allowance to the zemindar for his maintenance and for the expenses of the collection and of discharging the public duties entrusted

by the Government. Amongst lands granted for such purpose to the zemindars, were often included lands which had been appropriated to the payment and support of public officers of the zemindaris or villages included in them. These lands were called *chakaran* lands. In addition to the police force kept by the zemindar, at the expense of the Government, private individuals and communities were accustomed to keep watchmen for the protection of their persons and property under the name of *choukidars* and other names, who were paid by their employers and for whom no allowance was made by the Government. Besides the disorder which prevailed generally through the provinces, particular districts were exposed to marauding expeditions by lawless tribes inhabiting the hill districts and asserting a wild independence. To prevent these incursions it was necessary to guard and watch the *ghâts* or mountain passes through which these hostile attacks were made; and the Mahomedan rulers established a tenure called ghatwali tenure by which lands were granted to individuals often of a high rank, at a low rent or without rent, on condition of their performing these duties and protecting and preserving order in the neighboruing districts. Thus at the time of the grant of the Dewani, the three principal classes of service lands were (i) lands for the allowances and pensions of the Thanadars or the police force, (ii) lands for the allowances of Kazis and Kanungos and other public officers, and (iii) ghatwali lands.

At the time of the Permanent Settlement, the zemindars were exonerated from keeping up *thanas;* and the assessment of land was fixed exclusive of any allowances which have been made to them for keeping up the *thanas;* and it was declared that the produce of land or money received by them for such purpose, was resumable by the Government, and was to be collected separately and applied solely for the purpose of defraying the expenses of the police (sec. 8, cl. 4 of Reg. I of 1793). Thanadari service lands thus ceased to exist from 1793. So also did the service lands set apart for the allowances and pensions of public officers. The allowances of Kazis and Kanungos and public pensions were added to the assessment of the estates, and became payable by the Collectors of the revenue (sec. 38 of Reg. VII of 1793). So also were included in the assessment the profits of *chakeran* lands held by public officers and private servants (sec. 41 of Reg. VIII of 1793). Thus, of the three classes of service lands mentioned above, ghatwali lands only remain to be service lands.

Ghatwali tenures.—These tenures are mostly to be found in Birbhum, Manbhum, and Kharakpur. Those of Birbhum have been the subject of legislation. Regulation XXIX of 1814, after reciting that these ghatwals are entitled to hold, generation after generation, in perpetuity, subject to the payment of a fixed rent to the zemindar of Birbhum, and to the performance of certain

duties for the maintenance of the public peace and support of the police, and that their rents were recently adjusted and made payable direct to Government, enacts that they shall not be liable to enhanced rent, nor shall they be ejected so long as they pay the rents and discharge their duties; that the zemindar shall get the difference between the rent payable by the ghatwals and the land-revenue payable by him; that the tenures shall be sold for arrears of rent in the same way as estates for arrears of revenue, or shall be transferred by the Governor-General in Council to some other person, the zemindar taking any increase of revenue that may be obtained. Act V of 1859 enacts that the ghatwals shall have same power to grant leases as other proprietors, but not to extend beyond the life or incumbency of the grantor, unless the lease be granted for certain specified purposes and approved by the Commissioner. *See* the Regulation and the Act, *post.*

Incidents of Ghatwali tenures—Succession.—Birbhum ghatwali tenures are hereditary by statute (sec. 1, Reg. XXIX of 1814). With regard to other ghatwali tenures, those of Kharakpur have been held hereditary where the sanad contained the terms 'mokarari istemrari' *and* the tenures have long descended in the family (*Manoranjan Sing* v. *Raja Lilananda Sing*, 3 W. R. 84; *Raja Lilanand Sing Bahadur* v. *Thakur Manoranjan Sing*, 13 Beng. 124). And, although in custom the Kharakpur ghatwali tenures descend from father to son, no succession is legal or valid till confirmed by the zemindar and reported by him to the Government authorities (*Mahbub Hossein* v. *Patasu Kumari*, 1 Beng. A. C. 120, 10 W. R. 179). Ghatwali tenures are not divisible on the death of the ghatwal, but descend to the eldest son (*Hiralal Sing* v. *Jorarar Sing*, 6 Sel. Rep. o. e. 170, n. e. 204). A woman is competent to succeed and hold a ghatwali tenure (*Massamat Kastura Kumari* v. *Manohar Dev*, W. R. Sp. 39; *Tekait Durga Prasad Sing* v. *Tekaitni Durga Kumari*, 20 W. R. 154). Succession to ghatwali tenures is not regulated by any rule of *kulachar* or family custom or any school of Hindu or Mahomedan law, but solely by the nature of the tenure which descends undivided to the party who succeeds to and holds the tenure as ghatwal. (*Massamat Kastura Kumari* v. *Monohar Dev*, W. R. Sp. 39; *Ananda Ray* v *Kali Prasad Sing*, Ind. 10 Cal. 677).

Ghatwal's power to grant leases.—A ghatwal is not competent to grant a lease in perpetuity, and his successors are not bound to recognize such an incumbrance (*Jogesvar Sarkar* v. *Nimai Karmakar*, 1 Beng. s. n. 7; *Grant* v. *Bansi Dev*, 15 W. R. 38, 6 Beng. 652). But the presumption that a ghatwal may not grant a permanent lease does not arise when such a lease is granted *bonâ fide* for the clearance of jangal (*Davies* v. *Debi Mahtoon*, 18 W. R. 377). So, permanent leases granted by the ghatwals of Birbhum prior to the Decennial Settlement,

for the due performance of the duties for which the lands were originally granted to the ghatwals, and which have been held from generation to generation, cannot be set aside at the instance of the present sardar ghatwal (*Mukurbhanu Dev* v. *Kastura Kunwari*, 5 W. R. 215). A ghatwal of Birbhum granted a lease to A. After A and his heirs had been in possession of the lands under the lease for sixty years, a sarbarakar appointed by the Court of Wards for the estate of the heir of A's lessor, then a minor, entered upon the lands and ejected the person then in possession under the lease. *Held*, that notwithstanding that the ghatwals of Birbhum (independently of Act V of 1859) had not the power of alienation, still having an estate in perpetuity so long as the services are performed and the rent paid, the lease could not be regarded as a nullity, and the sarbarakar *was not justified in ejecting the tenant without legal process* (*Rangalal Dev* v. *The Deputy Commissioner of Birbhum*, Marsh. 117).

Enhancement of a Ghatwal's rent.—When grants of land had been made prior to the Permanent Settlement in ghatwali tenure at a fixed rent, and the Government subsequently dispensed with the services on the part of the zemindar, —*Held*, that as long as the ghatwals were able and willing to perform the services, the zemindar had no right to enforce payment of an enhanced rent on the ground that the services were no longer required (*Lilanand Sing* v. *Thakur Manoranjan Sing*, Ind. 3 Cal. 251). It was in this case remarked that ghatwals whose tenures were created before the Permanent Settlement came within the denomination of dependent talukdars as defined in Regulation VIII of 1793, and, further, that they were protected by the first clause of section 51 of that Regulation which was very comprehensive. It will be noted that section 51 of Regulation VIII of 1793 has been repealed by this Act; and this section (181) enacts that nothing in this Act shall affect any incident of a ghatwali tenure. A landlord, however, who could not enhance the rent of a ghatwal under section 51 of Regulation VIII of 1793, may not now enhance the rent, for sub-section 4 of section 2 of this Act provides that the repeal of any enactment by this Act shall not revive any right not in force or existing at the commencement of this Act.

Resumption and ejectment of Ghatwali tenures.—As regards the resumption of ghatwali tenures, a distinction obtains between those tenures which are hereditary and those which are only by appointment by the zemindar. Hereditary ghatwali tenures cannot be resumed by the zemindar, even if he be an auction-purchaser at a sale for arrears of revenue, of his mere motion, without the assent and against the will of the Government (*Babu Kuladip Narayan Sing* v. *Mahadev Sing*, Beng. F. B. 559; on appeal to Privy Council, 11 Beng. 71). And even when the Government dispenses with the services on the

part of the zemindar, the zemindar cannot resume the lands so long as the ghatwals are willing and able to perform the services (*Raja Lilanand Sing* v. *Thakur Manoranjan Sing*, 13 Beng. 124). But when a person is not entitled to succeed to a ghatwali tenure by hereditary right, but only by appointment by the zemindar and the Government has dispensed with the ghatwali services, the zemindar is under no obligation to continue to appoint, and may, on a vacancy occurring, settle the tenure as he pleases (*Mahbub Hossein* v. *Patasu Kumari*, 1 Beng. A. C. 120; *Raja Lilanand Sing* v. *Nasib Sing*, 6 W. R. 80; *Raja Lilanand Sing* v. *Kunhya Lal*, 17 W. R. 315).

Hereditary ghatwals cannot be evicted by the zemindar, except for misconduct (*Manoranjan Sing* v. *Raja Lilanand Sing*, 3 W. R. 84). The duties of a ghatwal are of a public nature, and a ghatwali tenure cannot be resumed by the zemindar upon the ground that the tenure had been forfeited on account of the tenant's refusal to perform certain private services (*Raja Nilmani Sing* v. *The Government of Bengal*, 6 W. R. 121; on appeal to Privy Council, 18 W. R. 321).

Transferability of Ghatwali tenures.—A Kharakpur ghatwali tenure is transferable only if the transfer is made with the assent of the zemindar or subsequently accepted by him (*Raja Lilanand Sing* v. *Durgavati*, W. R. Sp. 249; *Lala Gooman Sing* v. *Grant*, 11 W. R. 292; *Ananda Ray* v. *Kaliprasad Sing*, Ind. 10 Cal. 677).

Liability of a Ghatwali tenure for debt.—A ghatwali tenure is not liable for the debt of the former deceased holder of the tenure (*Binodram Sing* v. *The Court of Wards*, 7 W. R. 178). The surplus proceeds of a ghatwali tenure collected during the lifetime of the judgment-debtor are liable to be taken in execution as being personal property, but not profits accumulated after the judgment-debtor's death (*Kastura Kumari* v. *Binodram Sing*, 4 W. R. Misc. 5). A shikmi ghatwali tenure, held under the superior ghatwal, is not liable to be sold in execution, nor are its proceeds liable to attachment for satisfaction of the debt due from its holder (*Bali Dobey* v. *Ganai Dev*, Ind. 9 Cal. 388).

Other Service tenures.—A holder of a service tenure is not liable for the arrears of rent not paid by his predecessor (*Raja Nilmani Sing* v. *Bakra Nath Sing*, 10 W. R. 255). A distinct refusal by a tenant to perform services incidental to his holding renders him liable to ejectment (*Haragobind Raha* v. *Ramratan De*, Ind. 4 Cal. 67). The choukidari lands in the zemindari of Burdwan were annexed to the zemindari under section 41 of Regulation VIII of 1793, but were not assessed; they were included in order to be a security for the revenue, but were not assessed because the zemindar had not the full benefit of them: the zemindar claimed to resume those lands—*Held*, that he was not entitled to do so, but he had

the right to appoint choukidars who were bound to render the customary services to him (*Joykrishna Mookerjee* v. *The Collector of East Burdwan*, 10 Moore, 16). A jaghir tenure is not subject to the ordinary rules of inheritence according to the Hindu or the Mahomedan law, but is held upon the condition of approval of the heir by the Government: thus are precluded both division of the jaghir mehal upon the death of the holder and alienation during his life: a jaghir mehal is not liable to attachment and sale in execution of a decree against the father and predecessor in estate of a jaghirdar so approved, as assets by descent in the possession of the latter (*Nilmani Sing Dev* v. *Bakranath Sing*, Ind. 5 Cal. 389, and on appeal to P. C. Ind. 9 Cal. 188). In a suit for the purpose of assessing lands claimed by defendant to be held as chakeran, the present performance of the duties for which the service land was granted is the proper test of the validity or otherwise of the claim set up; and that on failure of the party to perform the services for which the land was originally granted, the right of the superior holder to assess the land immediately, without the institution of a resumption suit, arises (*Harinarayan Ghosh* v. *Massamat Aruna Dasi*, S. D. A., 1857, 786).

In *Jardine, Skinner & Co.* v. *Ramnarayan Beara*, 2 Wym. X. 1, it was held that a raiyat holding land in return for personal service rendered, could not be evicted notwithstanding the determination of the service, if he had held for more than twelve years; he was to be regarded as an occupancy-raiyat under section 6 of Act X of 1859, and could not be evicted as long as he paid rent. Doubt has, however, been expressed as to the correctness of this ruling in *Haragobind Raha* v. *Ramratan De*, Ind. 4 Cal. 67.

Homesteads.

182. When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

This is new.

When a raiyat holds his homestead.—The meaning of the word "raiyat" in this clause has given rise to difference of opinion. It has been supposed by some that the raiyat must be one who holds an agricultural holding under the same landlord. It seems to us, however, that the word is not so restricted in meaning. It will be remembered that the Rent Commission dealt with bastu land from two points of view. Regarding such land, in the first place, as an integral part of a

raiyat's occupancy-holding and not distinguishing it from the arable land, their Bill provided for the erection, without the landlord's consent, of a brick-built dwelling-house and out-offices, suitable for the raiyat and his family (sec. 36 ; *see* sec. 76 of this Act). Next the Commission's Bill regarded the bastu as apart from the agricultural land of the village, and conferred a right of occupancy in such land if held by *any person* for twelve years, such right being a heritable, transferable, and devisable interest (sec. 41). These proposals were adopted in Sir Ashley Eden's Bill (secs. 31, 32). They were also followed in Bill No. I as originally introduced into Council in March 1883, but with this modification that the provisions were made applicable only to settled raiyats. And in their case it was provided that they would have a permanent heritable, transferable, and devisable interest in *any bastu land held in that village or estate* (sec. 85). Those provisions were omitted from Bill No. II, and finally they were re-introduced in Bill No. III in the form of this section. The Select Committee reported : "We have considered the proposals of the Bengal Government regarding homestead lands, and find that they practically resolve themselves into this, that the tenure of such lands should be regulated by local custom, with this addition, however, that subject to local custom, they should be regulated by the provisions of the Bill applicable to land held by a raiyat. We have amended the section on these lines." A consideration of the history of the section given above leads us to the conclusion that the word "raiyat" is used in the general sense of *an agriculturist by occupation*. Under none of the previous Bills was it necessary to hold the homestead under the same landlord under whom an agricultural holding is held. Under Bill No. I it was necessary that the land should be in the same village *or estate* in which the agricultural holding is held. And it is reasonable to suppose that with the restriction of the settled raiyat to the village in exclusion of the estate, the limitation regarding the situation of homesteads was taken away. It is submitted, that this section applies when the holder is a raiyat, *i. e.*, an agriculturist by occupation, and the land in which his dwelling-house stands is so situate, that he may do his agricultural works by living in that place. The objection that by giving the word this meaning a sojourner in a town, who may have a plot of land in cultivation in a distant village, may claim a right of occupancy in the land in town where he resides is not valid ; for such land in town may be the residence of a labourer or trader, but cannot be considered to be the homestead of a raiyat. Where, however, an agriculturist lives in a mofussil town and cultivates land at a distance of one or two miles from his homestead, there is no reason why he should not acquire a right of occupancy in such homestead by living for twelve years, if there is no custom to the contrary.

Alteration in the old law.—Under the old Acts, occupancy-right could

be acquired in homestead land, only when such land formed part of the raiyat's holding; and when occupancy-right had been acquired in agricultural land, the fact that the raiyat built a homestead or used a part for gardens or tank did not take away the right of occupancy. In other cases, the incidents of holding homestead lands depended on the contract between the parties; and where there was neither any express permanent grant nor could any such grant be presumed from the conduct of the parties and the length of possession, the tenant was liable to be ejected. The law has now been changed, but that *only in favor of the raiyat*, and *he* may acquire a right of occupancy in homestead land, even if it be held by itself without being part of a holding, unless there is local custom or usage to the contrary.

Rulings under the old Acts.—In *Rani Chandeswari* v. *Ghina Pande*, 24 W. R. 153, it was held that when the principal subject of the entire occupation was bastu land, the residue of the holding being merely subordinate, the rent-law did not apply; but when the principal subject of the entire occupation was agricultural land, the building or buildings being mere accessories thereto, the rent-law applied. This ruling must now be understood as subject to the provisions of this section. If the tenant is a *raiyat*, and if there is no local custom or usage to the contrary, the rent-law will apply, whether the principal subject is bastu land or agricultural land. In *Pogose* v. *Raju Dhobi*, 22 W. R. 511, it was held that when the rent for bastu lands was paid by the raiyats to the landlord separately from the rent paid for agricultural lands, but the tenure of the bastu lands was a raiyati tenure, the distinction in the mode of paying the rent did not exclude those lands from the operation of the rent-law. The law remains the same under this Act.

There are a number of rulings under the old Acts, that lands used for the sites of houses, and not accessory to cultural purposes, were excluded from the operation of the rent-law (*Kali Kissen Bisvas* v. *Srimati Janaki*, 8 W. R. 250; *Rani Sarnamayi* v. *Blumhardt*, 9 W. R. 252; *Naimaddi Joardar* v. *Scott Moncrieff*, 3 Beng. A. C. 283, 12 W. R. 140; *Kali Mohan Chatterjee* v. *Kali Krishna Roy Chowdry*, 2 Beng. App. 39, 11 W. R. 183; *Madan Mohan Baisak* v. *Stalkartt*, 9 Beng. 97, 17 W. R. 441; *Rani Durga Sundari Dasi* v. *Omdatanessa Bibi*, 9 Beng. 101, 18 W. R. 235; *Kharuddin Ahmed* v. *Abdul Baki*, 9 Beng. 103, note; *Church* v. *Ramtanu Shaha*, 9 Beng. 105, note; *Mohar Ali Khan* v. *Ramratan Sen*, 21 W. R. 400; *Rani Lalanmani* v. *Raja Ajodhyaram*, 23 W. R. 432; *Kailas Chandra Sarkar* v. *Umananda Roy*, 24 W. R. 412; *Purna Chandra Ray* v. *Sadut Ali*, 2 Cal. 31). Now, unless there is local custom or usage to the contrary, the incidents of such tenancies, *if held by raiyats*, will be governed by the provisions of this Act; and the raiyats will acquire occupancy-rights and their rents may be enhanced and they may be ejected only under the rules herein contained. Further,

section 167, clause 4, provides that a purchaser at a sale for arrears of rent may, if he has purchased the tenancy free of all incumbrances, sue to enhance the rent of land whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made, if the land had not been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land. Section 167, clause 4, is comprehensive, and applies to all tenants whether raiyats or not, whereas this section (182) applies only to raiyats. Enhancement under the former may be had on the ground therein specified and to the limit of the rent of good arable land in the vicinity.

In *Prasanna Kumari Devi* v. *Ratan Bepari*, Ind. 3 Cal. 696, 1 Cal. 577, it was held that where a tenant from year to year or for a term of years, without any arrangement with his landlord, erected a dwelling-house on the land, he could not by such act convert the tenancy into a permanent one, and was liable to be ejected upon reasonable notice, unless there was any local custom to the contrary. This case was followed in *Tarakpada Ghosal* v. *Syama Charan Napit*, 8 Cal. 50. These rulings remain correct law in case of tenants other than raiyats. In case of a raiyat, he can only be ejected under the provisions of this Act regarding occupancy and non-occupancy raiyats, or if there is local custom for ejectment. As under the old law, so under this Act, a raiyat who has acquired occupancy-right does not cease to retain the right by erecting a pucka building on it (*Naimatulla Ostagar* v. *Gobind Chandra Dutt*, 6 W. R. X. 40); or by building a homestead and using a part for tank or garden (*Prasanna Kumar Chatterjee* v. *Jagannath Bysak*, 10 Cal. 25).

Case-law.—A landlord who allows his lessee to invest capital in erecting buildings on land *let for cultivation*, and raises no objection for a considerable number of years will, on the equitable principle of acquiescence, not be allowed to disturb the tenancy (*Beni Madhav Mukerjee* v. *Joykrishna Mukerjee*, 7 Beng. 152; *Braja Nath Kundu Chowdry* v. *Stewart*, 8 Beng. App. 51, 16 W. R. 216). Where land is given to the lessee *for the purpose of building a house to live in*, without any term being fixed for the tenancy, the tenure of the house and the land cannot be taken away from the lessee's heir or his vendor so long as he continues to pay the rent assessed on it (*Jahari Lal Shahu* v. *Dear*, 23 W. R. 399). So when land had been let out more than sixty years ago, and the defendant's ancestors erected substantial buildings about sixty years before suit, it was held that the Court might presume that the land was granted for building purposes, and that the grant was of a permanent character (*Gungadhar Shikdar* v. *Aimaddin Biswas*, Ind. 8 Cal. 960).

If one man grants a tenure to another for the purpose of living upon the land,

that tenure, in the absence of evidence to the contrary is assignable (*Beni Madhav Banerjee* v. *Joy Krishna Mukharjee*, 7 Beng. 152). When the plaintiff permitted B to erect a thatched dwelling-house with mud walls on a piece of land belonging to the plantiff, and B dwelt in it for more than forty years,—*Held*, that B had an assignable interest in the house and the land (*Durga Prasad Misser* v. *Brindaban Sukul*, 7 Beng. 159). The tenure of a khudkhast raiyat who has built a pucka house on his land and has acquired a right of occupancy may be transferable by custom (*Chandra Kumar Roy* v. *Kedar Mani Dasi*, 7 W. R. 247). Under the old law it was held that the mere fact that a bastu tenure was transferable under the customs of the district did not make it one which was not terminable by the landlord on sufficient notice (*Syama Sunduri Dassi* v. *Nabin Chandra Kalia*, 6 Cal. 117). This ruling is now modified by the provisions of this section. And if the tenant is a raiyat, he can only be ejected under the provisions of ejectment of an occupancy or of a non-occupancy-raiyat, as the case may be, unless there is any local custom or usage to the contrary.

Effect of this section.—The effect of this section, which is restricted only to *raiyats*, may be thus summarized :—

1. When the bastu forms part of an occupancy-holding, it shall be held as an integral part of, and be subject to, the same rules regarding enhancement and ejectment as the occupancy-holding.

2. If the arable portion of the holding be surrendered with the landlord's consent, the occupancy-right shall survive in the bastu.

3. When the bastu is held as portion of a non-occupancy holding, occupancy-right shall accrue in it under Chapter VI of the Act as in the rest of the holding; and, till the occupancy-right accrues, it shall be subject to the same rules regarding enhancement and ejectment as the non-occupancy holding.

4. When the bastu is held by a raiyat otherwise than as part of an agricultural holding, occupancy right shall under the provisions of Chapters V and VI of this Act accrue: provided if there is any local custom or usage to the contrary, such custom or usage shall prevail.

5. If by the established custom or usage of the village, no rent be payable for the bastu, no rent shall be leviable under this Act. If by such custom or usage rent be payable, the rent shall be the established village rate for similar land used for similar purposes. If there be no established village rate for bastu land, the initial rent shall be fixed by agreement between the landlord and the raiyat.

6. If by established custom or usage bastu rents be not liable to enhancement, no enhancement shall be claimable under this Act. If there be any estab-

lished custom or usage for enhancement, such custom or usage shall prevail. Otherwise the rent of bastu land shall be enhanceable, as in the case of arable lands, under the provisions of this Act (secs. 30 and 46).

Saving of custom.

183. Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Illustrations.

(1) A usage under which a raiyat is entitled to sell his holding without the consent of his landlord is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That usage, accordingly, wherever it may exist, will not be affected by this Act.

(2) The custom or usage that an under-raiyat should, under certain circumstances, acquire a right of occupany is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

This is new.

This section makes the provisions of this Act subject to custom, usage or customary right, when the latter is not inconsistent with, or not modified or abolished by, its provisions. The old Acts were also subject to custom, usage and customary right. Thus in *Hills* v. *Iswar Ghose*, W. R. F. B. 156, Peacock, C. J. remarked: "If there are any ancient or hereditary rights to which the raiyat is entitled, he is not precluded by Act X of 1859 from proving and claiming it in due course of law." Again, in *Thakurani Dasi* v. *Biswesvar Mukherjee*, Beng. F. B. 326, he observed that Act X of 1859 "did not take away the right" which a raiyat had "by grant, contract, prescription or other valid title." The omission, however, of express provisions like those of this section, led to a popular though erroneous belief that Act X of 1859 had superseded all customs, usages and customary rights. The Rent Commission remarked: "We have provided that nothing in the Bill shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions. The mode of proving custom is not very well understood in this country, and unfortunately, notwithstanding a dictum of Sir Barnes Peacock to the contrary, an idea got to prevail that Act X had superseded all customs, and was intended to do away with all agricultural rights, except those specially mentioned and provided for in that Act. We believe that there are many local customs, in this as well as in every other country, well understood by the people, recognized by the landlords

and susceptible of proof in the Courts of justice; and we think it very desirable to make it clear that the Bill is not intended to interfere with any of these, unless they have been expressly rescinded by, or are clearly inconsistent with, its provisions."

Custom.—Tne requisites of a valid custom under English law are: (1) it must have been used so long that the memory of man runs not to the contrary; (the time of legal memory in England was by statute limited to the reign of Richard I—1189 A. D.); (2) it must have been continued; (3) peaceable; (4) reasonable; (5) certain; (6) compulsory, and not left to the option of every person, whether he will use it or not; and (7) consistent with other customs, for one custom cannot be set up in opposition to another.

As to what length of time will constitute immemoriality of a custom in India the following remarks of Grey, C. J., may be considered:—"Although in this country we cannot go back to the period which constitutes legal memory in England, namely, the reign of Richard I, yet still there must be some limitation without which a custom ought not to be held good. In regard to Calcutta, I should say that the Act of Parliament, in 1773, which established this Supreme Court, is the period to which we must go back to found the existence of a valid custom, and that after that date, there can be no subsequent custom nor any change made in the general law, unless it be by some Regulation of the Governor-General in Council. In regard to the Mofussil, we ought to go back to 1793." (*Doe d. Jaga Mohan Rai* v. *Srimati Nimu Dasi*, Montriou's cases in Hindu Law, p. 596). As to the other requisites the following have been held necessary to make a custom valid in India:—"The plaintiff relies upon a custom and unless he can show that the custom is *undoubted* and *invariable*, he is not entitled to a decree" (*Jamila Khatun* v. *Pagal Ram*, 1 W. R. 250). A custom must be *certain* and *intelligible*: a custom which is uncertain and unintelligible cannot be upheld in point of law (*Bhagavan Das* v. *Balagobind Sing*, 1 Beng. s. n. 9.) "A custom must be proved by strict evidence that what is sought to be established has existed *unaltered* and *uninterrupted* from time *immemorial*" (*Beni Madhav Mukerjee* v. *Joy Krishna Mukerjee*, 7 Beng. 152, 12 W. R. 495). A custom must be *ancient* and *invariable* (*Ramalakemi Ammal* v. *Perumal Sethurayer*, 12 Beng. 396). "A custom is a rule which, in a particular family or district, has from long usage obtained the force of law. It must be *ancient*, *certain* and *reasonable*, and being in derogation of the general rules of law must be construed strictly." (*Hara Prasad* v. *Shiv Dayal*, 26 W. R. 55, P. C.) A custom to be good must be *definite* (*Lachman Roy* v. *Akbar Khan*, Ind. 1 All. 440). "A custom to be valid must be *ancient*, must have been *continued*

and *acquiesced in*, and must be *reasonable* and *certain*" (*Lala* v. *Hira Lal Sing*, Ind. 2 All. 49). A custom to be good must be *clear* and *well-defined* (*Dwarikanath Misser* v. *Haris Chandra*, Ind. 4 Cal. 925). A custom must be *reasonable;* one, by which an unlimited number of persons may take away the profits of private property so that nothing is left to the owner, is unreasonable and invalid (*Lachmipat Sing* v. *Sadatulla Nasya*, 12 Cal. 382). It will be thus seen that most of the requisites that make custom valid under English law, are also necessary under Indian law.

In order to prove custom the evidence of a few antagonistic witnesses are not sufficient (*Joy Krishna Mukerjee* v. *Raj Krishna Mukerjee*, 1 W. R. 153). Conflicting decisions of the subordinate Courts, three on one side and one on the other, are not sufficient to prove the prevalence of custom (*Indra Narayan Chowdhri* v. *Najaraddin*, W. R. Sp. 234). "The most cogent evidence of custom is not that which is afforded by the expression of opinion as to the existence, but by the enumeration of instances in which the alleged custom has been acted upon and by the proof afforded by judicial or revenue records or private accounts or receipts that the custom has been enforced (*Lachman Ray* v. *Akbar Khan*, Ind. 1 All. 440). To prove a local custom, the evidence must be precise and conclusive. (*Tekait Durga Prasad Sing* v. *Tekaitni Durga Kunwar*, 20 W. R. 154). The custom must be of that part of the country where the tenancy is situate (*Annapurna Dasi* v. *Umacharan Das*, 18 W. R. 55). Until some connection, either geographical or political, is shown to exist between any two districts, there is no ground for inferring the custom of one district from its existence in another (*Maharani Heyanath Kooer* v. *Babu Burni Narayan Sing*, 17 W. R. 329).

Usage.—For usage to have legal force, it is not necessary that it existed from time immemorial. It is sufficient that it is reasonable and certain in its nature and generally recognized and acted upon in the locality. To support an usage, (in this case a mercantile usage,) it was remarked by the Judicial Committee "there needs not the antiquity, the uniformity or the notoriety of custom, which in respect of all these becomes a local law. The usage may be still in its growth ; it may require evidence for its support in each case ; but in the result it is enough if it appear to be so well known and acquiesced in, that it may be reasonably presumed to have been an ingredient tacitly imported by the parties in their contract" (*Jogamohan Ghosh* v. *Manick Chand*, 7 Moore, 263). It will be thus seen that the requisites of an usage are much less strict and the evidence of its existence much easier than of custom. In fact, the rigidity of the requisites of a valid custom is such, that it led the Courts sometimes to relax the rules. Thus, though under the old Acts, an occupancy-right was held to be transferable only under *custom*, it was held

in *Chandra Kumar Roy* v. *Pyari Lal Banerjee*, 6 W. R. 190, that the custom of transferability need not be absolutely invariable; and again, in *Joy Krishna Mukerjee* v. *Durga Narain Sing*, 11 W. R. 348, that there was no necessity for the witnesses to fix any particular time from which the tenures became transferable; it was sufficient that there was at present the custom. This section recognizes local usage and section 178 recognizes the transferability of occupancy-holdings by local usage.

In this connection should be read proviso (5) of section 92 of the Evidence Act. It enacts "any usage or custom by which incidents, not expressly mentioned in any contract, are usually annexed to contracts of that description may be proved; provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract." Thus, if there be no express terms, usage may be imported by implication into a lease which contains nothing inconsistent with it and may entitle the raiyat to take the crop standing upon the land at the termination of the lease. Usage, in such a case, does not alter or contradict the terms of the lease, but only superadds a right.

CHAPTER XVI.

LIMITATION.

Limitation in suits, appeals and applications in Schedule III.

184. (1) The suits, appeals and applications specified in in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

(2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

This is new.

The suit, appeals and applications specified in Schedule III are :—(1) Suits to eject a tenure-holder or raiyat for breach of contract carrying forfeiture;

(2) suits for arrears of rent; (3) suits for recovery of possession of land claimed by the plaintiff as an occupancy-raiyat; (4) appeals from decrees or orders to the Court of a District Judge or Special Judge; (5) appeals from orders of a Collector to the Commissioner; and (6) applications for execution of decrees or orders for sums not exceeding Rs. 500, exclusive of interest after decree, but inclusive of costs of executing the decree, except when execution has been prevented by the judgment-debtor's fraud.

To suits, appeals and applications other than these, the general provisions of the Indian Limitation Act XV of 1877 would apply. For that Act is of general application and only when by any special or local law a period of limitation is specially prescribed for any suit, appeal or application, that its provisions do not affect or alter the period so prescribed (sec. 6).

Portions of the Indian Limitation Act not applicable to such suits, &c.

185. (1) Sections 7, 8 and 9 of the Indian Limitation Act XV of 1877 shall not apply to the suits and applications mentioned in the last foregoing section.

(2) Subject to the provisions of this chapter, the provisions of the Indian Limitation Act XV of 1877 shall apply to all suits, appeals and applications mentioned in the last foregoing section.

This is new.

Sub-section (1).—Section 7 of Act XV of 1877 provides that when a person is a minor, insane or an idiot at the time from which the period of limitation is to be reckoned, he may institute a suit or make an application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed by the Act. Section 8 provides that when one of joint creditors or claimants is under a disability and when a discharge can be given without the concurrence of such person, time will run against them all: but where no such discharge can be given, time will not run against any of them until one of them becomes capable of giving such discharge without the concurrence of the others. Section 9 provides that when once time has begun to run, no subsequent disability or inabilty to sue stops it.

Section 6 of the old Limitation Act IX of 1871 enacted that "when by any law not mentioned in the Schedule hereto annexed, and now or hereafter to be in force in any part of British India, a period of limitation differing from that prescribed by this Act is specially prescribed for any suit, appeal or application, nothing

herein contained shall affect such law." Acts X of 1859 and VIII B. C. of 1869 were not mentioned in the Schedule thereto annexed, and it was accordingly held that nothing contained in Act IX of 1871 affected the Rent Acts ; and therefore the rules as to the computation of the period of limitation contained in Act IX did not affect or apply to rent suits. Section 6 of the present Limitation Act XV of 1877 is, however, couched in different language : "when by any special or local law now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall *affect or alter the period* so prescribed." It has been held that the effect of this change in the language is, that the general rules contained in Parts II and III of Act XV of 1877 for computing the period of limitation are applicable to rent suits (*Behari Lal Mukherjee* v. *Mongalanath Mukerjee*, Ind. 5 Cal. 110 ; *Gopal Chandra Nowlakha* v. *Kristo Chandra Das*, Ind. 5 Cal. 314 ; *Khoselal Mahtun* v. *Ganes Datta*, Ind. 7 Cal. 690).

Sub-section (1) makes sections 7, 8 and 9 inapplicable to the three classes of suits and to applictions for execution mentioned in Schedule III. The reason of making this exception was thus explained by the Rent Commission : "After due consideration we have come to the conclusion, that it is inadvisable to extend to rent suits the allowance of time for disability. We think that a minor ought not to be competent on coming of age to sue a raiyat for rent which had accumulated during the whole period of his minority ; that this kind of debt, which a poor man usually discharges year by year out of the produce of the year, ought not to be allowed to accumulate ; and that if the manager of a minor's estate neglects his duty of realizing rents as they fall due, the minor's remedy ought to be an action for damages against such manager."

Sub-section (2).—This sub-section makes the application of sections 5, 6 and 10 to 25 of Act XV of 1877 to the suits, appeals and applications specified in Schedule III independent of the above doubtful rulings, i. e., irrespective of their being hereafter overruled.

Other suits, appeals and applications.—To suits, appeals and applications other than those specified in Schedule III, the whole provisions of the Limitation Act XV of 1877 (including secs. 7, 8 and 9) would apply.

Exclusion of time during which litigation prevented suit.—The Rent Commission recommended the incorporation of the following section in the Act :—" When the result of litigation between any persons is such that they stand in the relation of landlord and tenant to each other, and have stood in this relation while such litigation was pending, but until their mutual rights were finally determined by such litigation, such landlord was unable to sue such tenant for rent,

the period of limitation for suing for any such rent shall be computed from the termination of such litigation" (sec. 94). In recommending this section, the Commission attempted to formulate a principle deduced from case-law which, they said, was not very susceptible of definite expression. Probably, on account of this admitted difficulty, the section has not been incorporated. It will, however, be useful here to notice the cases on which the section was to have been based. "In *Rani Sarnamayi* v. *Sasi Mukhi Barmani*, 12 Moore 244, 2 Beng. P. C. 20, 11 W. R. P. C. 5, a zemindar had brought a patni tenure to sale under Regulation VIII of 1819. The patnidar was thereupon ousted, and the purchaser took possession of the patni tenure. The patnidar then successfully sued to have the sale reversed on the ground of irregularity, and recovered possession of the patni tenure together with mesne profits from the purchaser for the period of his possession. The zemindar subsequently sued the patnidar for rent of this period. Such suit was barred, if the period of limitation contained in Act X of 1859 were to be applied without qualification. The Privy Council, however, held that it was not barred; that the cause of action accrued at the time at which, the sale having been set aside, the obligation to pay this rent revived; that the patnidar, on being restored to possession, took back the estate subject to the obligation to pay the rent, and that the particular arrears must be taken to be due in the year in which that restoration to possession took place. Two points are to be noticed here. *First*, the zemindar could not sue the patnidar so long as the latter was out of possession. *Second*, the patnidar received mesne profits for the period for which rent was claimed." (R. C. I. 72.) This ruling was followed in the following cases:—In *Isan Chandra Roy* v. *Khaje Ahsanoolla*, 8 Beng. 537, note, 6 W. R. 79, the plaintiff claimed rent for 1272 more than three years after it has fallen due. It was held that the claim was not barred; for "it was impossible under the circumstances of the litigation, pending between the plaintiff and the defendant, that the plaintiff should have brought this suit against the defendant as his tenant for rent whilst he was still suing to eject him as a trespasser." (But consider now the effect of sec. 157, under which the landlord can sue for ejectment and claim rent in the alternative.) In *Din Dayal Paramanik* v. *Radha Kisori Debi*, 8 Beng. 536, 17 W. R. 415, the plaintiff had sued the defendant at the end of the year 1272, to recover arrears for 1271 and to eject him for non-payment; the litigation lasted till 1276, when the plaintiff obtained a decree which, however, was not executed as the defendant paid up within 15 days; in 1276 the plaintiff brought this suit to recover the rents of 1272 and of subsequent years: *Held*, that the plaintiff's claim for 1272 was not barred by limitation. In *Mohesh Chandra Chakladar* v. *Gangamani Dasi*, 18 W. R. 59, the plaintiff, a zemindar, being indebted on a bond gave the landholder assignment on the patnidars for the greater portion of the patni rent to be paid to the bond-holder until the debt was liquidated. The landholder not receiving his money sued the zemindar,

whereupon the zemindar brought this suit against the patnidar for rent due. *Held*, that on the principle of *Rani Sarnamayi's* case (12 Moore, 244), the plaintiff was entitled to recover the rent for 1273, though more than 3 years have elapsed from the end of that year. From *Rani Sarnamayi's* case, (12 Moore, 244,) must, however, be distinguished, other cases "in which, although the landlord had denied the continuance of the relation of landlord and tenant and had attempted to put an end to such relation, the tenant was nevertheless not dispossessed, and there was in consequence nothing to prevent the landlord from recovering the rent. In these cases, although one element, *viz.*, receipt, by the tenant of the profit of the land, was present, the other element, *viz.*, inability of the landlord to sue, was wanting." (R. C. I. 73.) Thus when the landlord's action in suing the tenant as a trespasser was not *bonâ-fide* but to destroy the right of the tenant, he was not entitled to any deduction in respect of the plea of limitation (*Hara Nath Roy Chowdhry* v *Golak Nath Roy Chowdhry*, 19 W. R. 18). So when the landlord, who was obliged to sue to establish his right to receive rent, did not include in that suit a claim for rent, which he could do, he could only recover rent for the last three years (*Barada Kant Roy* v. *Chandra Kant Roy*, 23 W. R. 280). A, the zemindar, granted a patni lease of certain taluks to B, who assigned it to C and D. On B's death, C and D applied to the Collector for the registration of the patni taluk in their names as assignees of B. A objected to the registration on the ground that the lease enured only for the life of B. A's objection being overruled, he instituted a regular suit to eject C and D, the present defendants, which was decided against A finally by the Privy Council in 1874. During the pendency of this litigation, the zemindar sued to recover the rent for the year 1868, not upon the basis of the patni lease, but for use and occupation, treating the tenants as mere trespassers. This suit was dismissed on the ground that the plaintiff ought to have sued on the lease. In 1875, the plaintiff brought the present suit for the rent of 1868 on the patni lease. The defendants pleaded *res judicata* and limitation. The plaintiff contended that the suit was within time on the ground that the right to recover the rent was in suspense during the pending of the litigation regarding the lease. *Held*, that the suit, though not *res judicata*, was barred by limitation under sec. 29 of Bengal Act VIII of 1869 (*Watson & Co.* v. *Dhanendra Chandra Mukerjee*, Ind. 3 Cal. 6). A sued for enhancement of rent of certain lands for a specified year. On the dismissal of this suit A, more than five years after the rent fell due, sued for the arrears of rent for the same year. *Held*, that A was not entitled to deduct the time occupied in the conduct of this enhancement suit from the period which elapsed since the rent first fell due in order to bring his case within the period of limitation prescribed for such last mentioned suits by sec. 29 of Bengal Act VIII of 1869. (*Brajendra Kumar Ray* v. *Rakhal Chandra Ray*, Ind. 3 Cal. 791). The ancestors of the plaintiff purchased certain property from Government in 1861, subject to an

unexpired lease held by the defendants of the same property. On the expiry of the lease in 1866, the plaintiff endeavoured to obtain possession, but was opposed. He omitted to sue for possession till 1874, when the defendants set up certain choukidari tenures, and the Court found the defendants were entitled to the rights claimed; also finding that the plaintiff's suit was barred by limitation. Plaintiff thereupon, in 1876, brought a suit against the defendants for arrears of rent for years 1866 to 1872. *Held*, that, as the last rent thus claimed accrued due in 1872, plaintiff's claim was barred by sec. 29, Bengal Act VIII of 1869 (*Hara Prosad Roy* v. *Gopal Das Dutt*, Ind. 3 Cal. 817). After the expiration of the period prescribed by sec. 29 of the Bengal Act VIII of 1869, a plaintiff suing for arrears of rent cannot insist on the pendency of another suit, brought by him for possession of the land, as preventing limitation from running, where there has been no time during which such rent could not have been recovered if he had acted on his right of suing for it (*Hara Prasad Ray* v. *Gopal Das Dutt*, Ind. 9 Cal. 255). The defendant held a patni in respect of a share in a zemindari which share was held and the patni granted by a Hindu widow who dided in Pous, 1281. The plaintiffs were the heirs who succeeded to the zemindari on the death of the widow. In Pous 1284 they brought a suit against the defendant for the purpose of setting aside the patni, and giving them *khas* possession with mesne profits. This decree was, however, reversed on appeal on the 6th Sraban 1288, and their suit was dismissed. In a suit for arrears of rent from 1282 to 1288, *Held* that the plaintiff was not protected from the oparation of the law of limitation during the pendency of his suit to set aside the patni, and that his suit was barred except as to the arrears accruing within three years preceding the suit (*Sheriff* v. *Dina Nath Mukerjee*, Ind. 12 Cal. 258).

CHAPTER XVII.

SUPPLEMENTAL.

Penalties.

Penalties for illegal interference with produce.

186. (1) If any person, otherwise than in accordance with this Act or some other enactment for the time being in force,—

(*a*) distrains or attempts to distrain the produce of a tenant's holding, or

(*b*) resists a distraint duly made under this Act, or forcibly

or clandestinely removes any property duly distrained under this Act, or

(c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding,

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code, XLV of 1860.

(2) Any person who abets within the meaning of the Indian Penal Code, XLV of 1860, the doing of any act mentioned in sub-section (1), shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

This is new.

The punishment for criminal trespass is, under section 447 of the Indian Penal Code, imprisonment of either description which may extend to three months, or fine which may extend to Rs. 500, or both. As to what constitutes abetment and the punishment for abetment, see Chapter V of the Indian Penal Code.

Agents and representatives of landlords.

Power for landlord to act through agent.

187. (1) Any appearance, application or act, in, before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on, or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or

authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

This is new.

The written authority must be stamped as a power of attorney under art. 50, Schedule I of Act 1 of 1879. See, *ante*, p. 319.

When an instrument contains a several power of attorney conferred by each of the parties by whom or on whose behalf it is executed, it requires a separate stamp in respect of each power *(In the matter of Babu Jay Kissen Mukerjee and three others*, per Garth, C. J., and Wilson and Field, JJ.; Board's Revenue Circular for December, 1885, p 108).

Joint-landlords to act collectively or by common agent.

188. Where two or more persons are joint-landlords, anything which the landlord is under this Act required or authorized to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

This is new.

May cosharers in joint undivided land now sue separately for rent, if they were collecting rent separately?—This is the most important question under this section. And the solution of the question depends on the decision of these two points : (1)—Is a landlord authorized to sue for rent under this Act, or has he a right to sue for rent independently of it ? and (2)—Is a landlord in joint undivided property, but collecting his share of the rent separately, a joint landlord within the meaning of this section ?

(1) As to the first point. It is clear that the right to *receive* rent and the right to *recover rent by suit* are two different rights. (See pp. 20-21.) Even conceding that a landlord has an inherent right to *receive* rent from his tenant, he can possibly have no right to *sue for rent and recover it by process of law* independently of the method prescribed by the Legislature. All the steps that a landlord takes for recovery of rent by suit, from the filing of the plaint onwards, are authorized solely by Legislative enactments. Though this Act nowhere expressly authorizes the bringing of a suit for arrears of rent, yet it is this Act that defines 'rent,' defines an 'arrear of rent,' prescribes the form of the plaint in a suit for arrears of rent, fixes what interest or damages may be had for such arrears, lays down the procedure in rent suits and prescribes the limitation applicable to such suits. Thus, but for this Act, the landlord could not sue and recover rent by suit ; for there would be a total absence of the method prescribed by the Legislature for prosecuting such a suit. A landlord must therefore be taken

to be authorized to sue for rent only by this Act. Further, sections 56 and 57 *require* the landlord to grant rent receipts and rent acquittances. And if a joint-landlord may not grant separate receipts and acquittances, it does not stand to reason that he will be able to recover rent through the aid of the Courts. The whole question, therefore, would appear to depend on the meaning to be attached to 'joint-landlords.'

2. As to the second point. The term "joint-landlords" has not been defined in this Act. Its meaning has therefore to be found from the definition of "landlord," and the spirit of the whole Act, with such light as may be obtained from existing case-law. Landlord has been defined to mean "a person immediately under whom a tenant holds." Joint-landlords would thus mean "persons immediatly under whom jointly a tenant holds." It would thus appear that persons are joint-landlords irrespective of separate collection of rent, so long as their lands are not partitioned but remain joint and undivided. In *Gani Mahmud* v. *Moran*, Ind. 4 Cal. 96, it was observed that separate payment of rent was perfectly consistent with the continuance of the entirety of a holding. So, 'holding' has been defined in this Act to be ''a parcel or parcels of land held by a raiyat." In *Rash Vihari Mukerjee* v. *Sakhi Sundari Dasi*, Ind. 11 Cal. 644, it was held that the existence of a kabulyat, in favor of one cosharer, more than 50 years old, did not *per se* show that the tenancy was separated. The remark in *Kasi Kisore Rai Chowdry* v. *Alip Mandul*, Ind. 6 Cal. 151, that separate payment of rent to each of several cosharers constitutes a separate tenancy is the opinion of the presiding Judge (Prinsep, J.,)—an opinion which he expressly states he has always subordinated to the rulings in other cases to the contrary. Thus, it would appear, that case-law supports the construction that in the definition of joint-landlords, the payment of rent jointly is not an essential factor, but that co-owners of joint undivided property are joint-landlords irrespective of separate or joint collection of rents.

Next let us consider the effect of holding that a landlord in joint undivided property who collects his share of the rent separately is not a joint-landlord within the meaning of the term as used in this Act. He will then generally be able to do anything and all that a landlord may do. For instance, he will be able to enhance the rent of a raiyat in his share independently of his cosharers under section 30. But it has been argued that because in that section the word 'holding' occurs, and because that word means a parcel or parcels of land, therefore a cosharer in joint undivided property, though he collects rents in his share seperately, may not enhance. No such objection, however, may be taken regarding tenures; and a co-sharer will be able independently to enhance the rent of a tenure in his own share. Further, section 67 which provides for a division and

appraisement of rent in kind does not contain the word 'holding.' A co-sharer in joint property collecting his share of the rent separately will therefore be able to apply for division and appraisement of rent in kind. Again, how will a sharer in joint property eject his tenant or accept the landlord's fee? And can he apply for measurement, or commutation, or distraint? In fact, there are about 50 sections in the Act (sections 6, 10, 12, 13, 14, 18, 20, 25, 29, 30, 40, 42, 43, 44, 45, 46, 48, 49, 52, 56, 57, 58, 64, 69, 72, 77, 79, 80, 81, 83, 84, 85, 86, 87, 88, 89, 90, 93, 101, 103, 121, 145, 155, 156, 158, 162, 163, 178 and 180) which either expressly or impliedly authorize or require the landlord to do some act or another. And as it will be against all rules for the interpretation of statutes sometimes to understand the word 'landlord' in one meaning and sometimes in another in these sections—not for anything contained in the subject or context, but for considerations of hardship to the landlord or to the tenant—considerations variable according to individual idiosyncrasies,—the word landlord must be understood in the same sense all through. And if a sole landlord be understood to include a person who, though in joint property, collects his rent separately, the conclusion becomes inevitable that under this Act he may do many things which he could not do under the former Acts. But there seems to be no ground for holding that the Legislature intended to alter the law in these respects to the prejudice of the tenant.

It has been argued that the right of a separate suit for arrears of rent by a landlord in joint property collecting his rent separately had been acknowledged for a long number of years, and if the Legislature wanted to take away that right, they should have done so by a more explicit provision. It may be answered that section 188 is clear; its application to suits for recovery of rent would have been clearer, if there were a section in the Act authorizing the landlord to sue for arrears of rent. But if the Legislature have taken away the power of a joint-landlord to grant a valid rent-receipt or a valid acquittance, their intention not to allow a separate suit for rent is perfectly clear.

It may be noted that the Commission Bill and the Bengal Bill expressly saved the right of separate suit by a co-sharer who collects his rent separately. Secs. 69 and 61, respectively, of these Bills were the same, and as follows:—

"Except in the cases hereinafter excepted, rent payable to co-parceners shall be paid upon the joint receipt of all such co-parceners, or, where a manager has been appointed by them or by the District Judge, upon the receipt of such manager; and all such co-parceners must be made parties to any suit brought for the recovery of arrears of any such rent. Any suit brought by one or more co-parceners and

not by all or to which all have not been made parties (a), shall be dismissed with costs.

"*Exception* 1.—When an agreement has been made between a tenant and one or more of several co-parceners *with the consent of the others of them* that the share of rent to which such one or more co-parceners is or are entitled shall be paid directly to him or them, such share of rent shall be so payable and *recoverable.*

"*Exception* 2.—When a tenant has usually paid to one or more of several co-parceners *without objection from the other or others of them* the share of rent to which such one or more co-parceners is or are entitled, such share of rent shall be so payable and *recoverable.*

"*Exception* 3.—When a co-parcener is unable to obtain his share of the rent payable by a tenant in consequence of collusion between such tenant and the other co-parceners, he may *sue to recover* his share of rent separately, and shall in such suit make such other co-parceners defendants."

The Legislature omitted this section from the Bill that was introduced into Council; and for the definition of landlord in the Commission and Bengal Bills which was "landlord means a person to whom a tenant is liable to pay or deliver rent," substituted another, differently worded—"landlord means a person immediately under whom a tenant holds." And the Select Committee expressly gave the following reason for enacting section 188: "In order to remove a misapprehension which, notwithstanding the definition of landlord contained in the Bill, we have found to exist in some quarters, we have added a section to make it clear that, when two or more persons are joint-landlords, they must act together or through an agent appointed by them jointly."

From the history of section 188, therefore, it would appear that the Legislature did intend that when joint land is held under two or more persons, they should all join in an action to recover rent and not harass the tenant by different suits.

It has also been argued that this Act has not put any restrictions on contracts to pay rent separately to joint-landlords; and, therefore, section 188 should not be construed to bar a separate siut for rent by a joint-landlord. This argument is not worth much. A tenant is perfectly at liberty to agree to pay rent separatly to joint-landlord, or to agree to an enhancement of rent in his share, or to allow him to commute rent, and so on. All that section 188 bars, is a *suit* by a joint-landlord. Section 188 no more prevents a joint-landlord receiving and a tenant paying rent in an

(a) "The practice in India is to make *pro forma* defendants those persons who have co-existent rights with the plaintiff to sue, but who refuse to join as plaintiffs, the fact of the refusal being stated in the plaint."

undivided share than section 48 prevents an under-raiyat paying more than 50 per cent. over and above the head-rent of the raiyat, or section 29 prevents an occupancy-raiyat to pay a higher enhanced rent than two annas in the Rupee.

On all these considerations it is submitted that a co-owner in joint undivided property can no longer sue for his share of the rent separately, though he was collecting such rent separately.

Joint-landlord's remedy.—Co-sharers in joint property should now appoint a common manager; if they may not agree, any one of them may apply under section 93 for the appointment of such a manager. Or they should have their shares partitioned. But these remedies are not always convenient, and they are expensive. This section (188) says that they must all act together or by a common agent. It is therefore not clear that a co-sharer may maintain a suit under this Act, if he makes the other co-sharers defendants in the suit, and claims the relief due to all the co-sharers. On the one hand, it may be said that in such a case all the co-sharers do not act together. On the other hand, it may be argued that the plaintiff represents the interests of all the co-sharers, and his action is legally the action of all the co-sharers. Further, the decision in such a suit will likely be *res judicata* between the *pro forma* defendants (other co-sharers) and the real defendant (the tenant). (See *Bisvarup Goswami* v. *Gorachand Goswami*, Ind. 9 Cal. 120.) It is submitted, that when one co-sharer brings a suit making the others *pro forma* defendants, and claims the relief due to all the co-sharers, the suit should be considered to be brought by all the co-sharers within the meaning of this section. And any doubt that may exist on the point ought to be removed by amending this section and substituting clear words to that effect. Where the number of co-sharers are numerous, any one of them may, under the provisions of section 30 of the Civil Procedure Code, with the permission of the Court, sue for all the sharers.

Other suits by a co-sharer.—It is perhaps not necessary to add that, according to the view taken, like a suit for rent, no other suit under this Act (*e. g.*, for commutation, enhancement, measurement, &c.,) is maintainable by a co-sharer separately for relief in his share.

Rules under Act.

Power to make rules regarding procedure, powers of officers and service of notices.

189. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(1) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or

under this Act, and may by such rules confer upon any such officer—

(*a*) any power exercised by a Civil Court in the trial of suits;

(*b*) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act V B. C. of 1875; and

(*c*) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil; and

(2) to prescribe the mode of service of notices under this Act where no mode is prescribed by this or any other Act.

This is new.

The rules made by the local Government under the provisions of this section have been printed under the different sections of the Act to which they refer.

Some notifications of the local Government under this Act, which have been published since the preceding pages were printed, are given below.

Staple food-crops.—Having considered the reports submitted on the subject by the Board of Revenue and District Collectors, the Lieutenant-Governor is pleased to determine and notify under Rule 2 under section 39 of the Tenancy Act (*ante*, p. 121) that the staple food-crops shall be as follows :—

1. *Bhagulpore Division.*—In the districts of Monghyr, Purneah, and Maldah—Wheat for up-land and rice for low-land. In the Sudder and Banka sub-divisions of the district of Bhagulpore—*Makai* for up-land and rice for low-land. In the sub-divisions of Muddehpura and Soopoole of the same district—*Marwa* for up-land and rice for low-land.

2. *Patna Division.*—In the districts of Gya and Shahabad and in the sub-division Behar of the district of Patna—Wheat for up-land and rice for low-land. In the districts of Mozufferpore, Chumparun and Sarun, in the sub-division Tezpore of the district of Durbhunga and in the Sudder and Barh sub-divisions of the district of Patna—*Makai* for up-land and rice for low-land. In the Sudder and Madhubani sub-divisions of the district of Durbhunga—*Murwa* for up-land

and rice for low-land. In sub-division Dinapore of the district of Patna—Barley for up-land and rice for low-land.

3, 4, 5, 6 and 7. In all districts of the Burdwan, Rajshaye, Chittagong, Dacca and Presidency Divisions—rice. (*Notification, dated 29th April, 1886, amended by Notification, dated 7th June, 1886.*)

Compulsory registration.—"With reference to the provisions of the Bengal Tanancy Act VIII of 1885, regarding leases of immovable property, the notification of this (Bengal) Government, dated the 15th August, 1866, exempting from the operation of the Indian Registration Act XX of 1866, leases of immovable property in the districts of Gya and Shahabad for terms not exceeding two years and reserving a rent not exceeding Rs. 50 per annum, is hereby cancelled."—(*Notification, dated the 17th May, 1886.*)

Collector under section 69.—"Under the authority vested in him by Chapter I, section 3 (16) of the Bengal Tenancy Act of 1885, the Lieutenant-Governor is pleased to invest the Deputy Collector of Howrah with the powers of a Collector for the purpose of discharging the functions referred to in sections 69-71 of the Bengal Tenancy Act."—(*Notification, dated the 28th May, 1886.*)

Registration Rules.—" The following rules for the registration of documents under the Bengal Tenancy Act VIII of 1885, framed under section 69 of the Indian Registration Act III of 1877, are published for genera linformation:—

"1. A document presented for registration under sections 12, 18, 85 and 175 shall be first examined with reference to registration rule 42, and next with reference to the particular section of the Tenancy Act under which it is presented.

"2. In certifying its admissibility to registration, the registering officer shall quote registration rule 42, as well as the particular section of the Tenancy Act under which it is admitted. Thus: 'Admissible under rule 42, also under section of the Bengal Tenancy Act VIII of 1885. Correctly stamped under the Indian Stamp Act, Schedule , No.

"3. When a sub-lease executed by a ryot purporting to create a term exceeding nine years is presented for registration, it shall be returned at once with a note to the following effect recorded on its back, *viz.*: 'Not admissible under sub-section 2, section 85 of the Bengal Tenancy Act VIII of 1885.' The note shall be signed, sealed, and dated by the registering officer.

"4. When a document is admitted to registration, the fees levied shall be noted below the certificate of admissibility in the following manner, *viz.*:—

	Rs.	A.	P.	Rs.	A.	P.
Fees paid A	1	0	0			
Ditto B	1	4	0			
				2	4	0
Landlord's fee	2	0	0			
Process-fee (in court-fee stamps)...	0	12	0			
				2	12	0
TOTAL ...				5	0	0

(Sd.)

Sub-Registrar.

"5. The document shall be entered in the Registration Fee-book No. 1 in order of presentation in the same manner as any other document presented under the Indian Registration Act. The registration fee shall be credited in column 7 with the necessary details and included in the total of other registration fees for credit to Government.

"*Note.*—The fee-book, which is now in use, is called the Registration Fee-book, and the new fee-book is called the Tenancy Act Fee-book.

"6. Fees for processes shall be paid in court-fee stamps, which shall be affixed to the notices, and cancelled by the registering officers in the manner prescribed in section 30 of the Court Fees Act, *i. e.*, by punching out the figure-head so as to leave the amount designated on the stamps untouched. The pieces punched out shall be immediately destroyed.

"7. The landlords' fees and the process-fees shall be shown separately in a new fee-book (hereafter called the Tenancy Act Fee-book.)

Tenancy Act Fee-book.

1	2	3	4	5	6	7	8	9	10	11	12	13
Serial number of notice.	Serial number of document in Registration Fee-book.	Date of presentation.	From whom received.	Nature of document.	Annual rent.	Landlord's fee.	Process-fees in Court-fee stamps.	Number and date of chalan remitting the landlord's fees to the treasury.	Date of sending notices.	Serial number of copy sent under section 176.	Signature of the registering officer.	REMARKS.

"8. Column 1 of the Tenancy Act Fee-book should be filled up on the presentation of the document, whether the particular notice is ready or not. The number in that fee-book should be transferred to the notice when it is ready. Columns 2 to 8 should also be filled up immediately on the presentation of the document. Columns 9 and 10 should be filled up on the respective dates on which the landlord's fees are sent to the treasury, and the notices to the Collector or the Sub-divisional Officer, as the case may be. Column 11 should be filled up on receipt of the fees for copy under section 176. The registering officer should affix his initials to each entry in column 12 of the Tenancy Act Fee-book.

"9. On the completion of the registration of documents relating to the transfer of the tenures under section 12, or raiyati holdings at fixed rates under section 18, notices shall be prepared in duplicate in the form specified in Schedule I of the Rules under the Bengal Tenancy Act published in the *Calcutta Gazette* of the 23rd December, 1885 (a); and they shall be forwarded to the Collector or the Sub-divisional Officer, as the case may be, under a covering letter to the following effect :—

No.

Dated

To

THE

SIR,

I HAVE the honor to enclose herein the notices under section 12, Act VIII of 1885, in the prescribed form, and to state that I have, on ———, remitted the landlord's fees to the treasury. The details of the landlord's fees and process-fees realized on account of these notices are shown below :—

Number of notice.	Landlord's fees.			Process-fees.		
	Rs.	A.	P.	Rs.	A.	P.
56 ...	1	5	0	0	12	0
57 ...	3	12	6	1	8	0
58 ...	5	4	9	3	0	0
Total ...	10	6	3	5	4	0

I have, &c.

Seal.

Sub-Registrar of

(a) See pp. 54, 55, *ante*.

"10. The amount of landlord's fee and the process-fees shall be entered in the printed receipt for the document granted under section 52 of the Registration Act.

"11. An application under section 176 for notification of incumbrances to the landlords may be made either verbally or in writing; and when made in writing, it shall bear a Court-fee stamp of annas eight. It shall be accompanied by the fee for the copy under articles G and H of the schedule of fees under the Registration Act, as well as by the amount of process-fees. A receipt for the amounts thus taken shall be granted in the form (with necessary alterations) of receipts prescribed under Section 52 of the Registration Act.

"12. An entry shall at the same time be made in the Registration Fee-book and fees credited to the Registration Department. The process-fee shall be accounted for in the Tenancy Act Fee-book as directed in paragraph 7 of these rules.

"13. The copy of the instrument under section 176 shall be forwarded to the Collector or the Sub-divisional Officer, as the case may be, with a covering letter to the following effect :—

No.

Dated

To

THE

SIR,

I HAVE the honour to forward the copy herein enclosed, and to request that it may be served on A B, resident of————, as required by section 176, Act VIII of 1885. Court-fee stamps for process-fee of Rs. are affixed to the copy.

I have, &c.

Sub-Registrar of

A notice in the form prescribed in the rules under the Tenancy Act, referred to in paragraph 9, is not required in transmitting a copy to the Collector or the Sub-divisional Officer under section 176. The stamps received under that section are to be treated in the same manner as directed in Rule 6, *supra*.

"14. A separate chalan shall be prepared for the landlord's fee credited in

in the Tenancy Act Fee-book. For this purpose the details shall be entered on the reverse of the chalan. These shall be as follows :—

1	2	3	4	5		
Serial number of chalan.	Number of notice.	Name of depositor.	Name of the person to whom payable	AMOUNT.		
				Rs.	A.	P.

(Notification dated 23rd June, 1886.)

Procedure for making publication and confirmation of rules.

190. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the Local Government or High Court, in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by any other authority, in the prescribed manner:

Provided that every such draft shall be published in the official Gazette.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the official Gazette of a rule purport-

ing to be made under this Act shall be conclusive evidence that it has been duly made.

(6) All rules made under this Act may, from time to time, subject to the sanction (if any) required for making them, be amended, added to, or cancelled by the authority having power to make the same.

This is new.

The draft of the rules made by the Local Government was published in the *Calcutta Gazette* of the 4th November, 1885; and the rules, as settled, in the *Calcutta Gazette* of the 23d December, 1885. The draft of the proposed rules by the High Court was published in the *Calcutta Gazette* of the 3rd March, 1886; the rules have not yet been finally published.

Provisions as to temporarily-settled districts.

Saving as to land held in a district not permanently settled.

191. Where the area comprised in a tenure is situate in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognized in settlement-proceedings by a Revenue-authority empowered by the Government to make definitively or confirm settlements.

This is new.

This section enacts an exception to the rule and presumption of fixity of rent of section 50. The Rent Commission said: "We have made one exception to the general operation of the presumption, that is to say, in the case of tenures in an estate *not permanently settled.* We have provided that these shall not be protected upon the expiry of a temporary settlement, unless the right to hold them for ever at a fixed rate of rent has been expressly recognized in settlement proceedings by a Revenue-authority empowered by Government to make definitely or confirm settlements."

Tenure.—The Rent Commission and the Bengal Bills enacted this exception as regards both tenures and holdings (sec. 6, *exception* and sec. 17, *exception* of the former and sec. 6, *exception* and sec. 16 *exception* of the latter). The marginal reference in all the three Bills that were before the Council mentioned all those

sections. Thus it appears that the Legislature intended that the provisions of this section should apply to both tenures and holdings. The position of this section in Bill No. I was in Chapter III which treated of 'tenure-holders.' But in that Bill raiyats at fixed rent were included among tenure-holders. Further, there is no reason to suppose why tenure-holders should be liable to pay a higher rent, and raiyats under similar circumstances should not be so liable. There are thus strong grounds to suppose that the word 'tenure' has been in this section used in the wide sense of 'tenancy' and includes a 'holding,' just as the word 'holding' includes all kinds of tenancies in the forms in Schedule II.

Power to alter rent in case of new assessment of revenue.

192. When a landlord grants a lease, or makes any other contract purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or at a particular rent, and while the lease or contract is in force—

(*a*) land-revenue is for the first time made payable in respect of the land, or

(*b*) land-revenue having been previously payable in respect of it, a fresh settlement of land-revenue is made,

a Revenue-officer may, notwithstanding anything in the contract, between the parties, by order, on the application of the landlord or of the tenant, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

This is new.

This section only empowers the Revenue-officer to interfere with rights that depend upon contracts, and not with rights that depend upon status.

Rights of pasturage, &c.

Rights of pasturage, forest-rights, &c.

193. The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest-rights, rights over fisheries, and the like.

Old Acts.—Section 23, clause 4 of Act X of 1859.

When a pasture, forest, fishery or the like does not stand by itself but forms only a subordinate part of one whole, the remainder of which is land held for the purpose of collecting rent or of bringing it under cultivation or to cultivating it, it is included within tenancies under this Act. Further, when a raiyat acquires land for cultivation but uses it for pasture, it remains a holding (sec. 5). In all these cases all the incidents of tenancies under this Act attach to them. It is only in other cases that this section has application. (See notes, *ante*, pp. 18 and 32.)

It is only the provisions regarding the recovery of rent that are made applicable to pastures, forests, fisheries and the like, and that so far as they may be applicable. The other provisions of the Act do not apply to them. For example, there can be no right of occupancy in a mere fishery (*Uma Kant Sarkar* v. *Gopal Sing*, 2 W. R. X. 19; *Balai Sati* v. *Akram Ali*, Ind. 4 Cal. 961; *Syam Narain Chowdry* v. *Raja of Durbhanga*, 23 W. R. 432; *Jagabandhu Shaha* v. *Pramatha Nath Roy*, Ind. 4 Cal. 707); or in a mere tank (*Sibu Jalia* v. *Gopal Chandra Choudhuri*, 19 W. R. 200; *Nidhi Krishna Bose* v. *Ram Dass Sen*, 20 W. R. 341). Similarly, the provisions of the rent law regarding enhancement of rent do not apply to raise the rent payable by a lessee on account of a right to collect lac insects growing in the lessor's lands (*Gopal Chandra Sing* v. *Sankari Paharin* 23 W. R. 458). The termination of rights over pastures, fisheries, forests and the like would appear to be governed by the provisions of section 111 of the Transfer of Property Act IV of 1882.

Fisheries.—The owner of a patni taluk sued to restrain the defendants from fishing in certain *bhils* appertaining to his patni taluk. The defendants by their written statement alleged that they, with the inhabitants of certain villages belonging to the taluk, had acquired a right by prescription to fish in the *bhils*, and that they had excercised this right for more than twelve years. They further claimed to have acquired a right of fishery by immemorial custom. It was proved that the tenants of the villages referred to, without special reference to the defendants, had been in the habit of fishing in the *bhils*. *Held*, that proof of acts of "misappropriation of fish unless done by a person or a defined number of persons, even if such acts had the power of depriving the owner of a property wholly of its profits, would not amount to dispossession of the owner." *Held*, assuming that such a fluctuating body as the tenantry of certain pergunnahs could be said to be in wrongful possession of a property, still until it was shown that the owner was excluded from the participation of the enjoyment of it, he could not be said to be out

of possession (*Luchmiput Sing* v. *Sadatulla Nasya*, 12 Cal. 382). But where plaintiffs were proprietor of a certain lake, the right of fishing in which they let out to tenants and in this lake the defendants fished for eighteen years adversely to, but with the knowledge of, the plaintiffs: *Held*, that a suit to have it declared that plaintiffs were entitled to the *jalkar*, and that the defendants had no right to fish therein without their premission, was barred by limitation. *Held*, further that a *jalkar* was not an easement within the meaning of Act IX of 1871, section 27 (*Parvati Nath Roy Chowdry* v. *Madhu Parol*, 1 Cal. 592). A party owning the right of fishery in a river from the time of the Permanent Settlement, is at liberty to exercise that right in the open channels and also in all closing or closed channels abandoned by the river up to the time when the channels become finally closed at both ends, *i. e.*, so long as fish can pass to and fro (*Krishnendra Ray Chowdry* v. *Maharani Sarnamayi*, 21 W. R. 26). And if the flowing stream dried up, and the defendants acquired a right to the land by the law of accretion, that right would be subject to the exercise of the prior right of fishery (*Kali Sundur Ray* v. *Dwarikanath Mozumdar*, 18 W. R. 460). The right of fishing in a navigable river does not belong to the public, nor is the Government prohibited by any law from granting to individuals the exclusive right of fishing in such a river (*Chandra Jalia* v. *Ram Charan Mookerjee*, 15 W. R. 212). A private right of fishery in a tidal navigable river must, if it exists at all, be derived from the Crown, and established by very clear evidence, as the presumption is against any such private right. A mere recital in quinquennial papers that a person is the owner of jalkar rights in a zemindari permanently settled with him by Government is not sufficient to give to such person a right of fishery in a public navigable river; any grant under such word "jalkar" would be perfectly satisfied if construed to apply exclusively to a right to fish within enclosed waters, such as jheels (*Prasanna Kumar Sircar* v. *Kumar Parui*, Ind. 4 Cal. 53). The exclusive right of fishery in tidal navigable rivers may be granted by the Crown to private individuals. Such a right must ordinarily be proved either by proof of a direct grant from the Crown or by prescription. In the absence of a title by grant or prescription in persons alleging themselves to be the holders of a *jalkar* under an *ijara*, the mere payment of rent by fishermen to former *ijaradars* does not estop such fishermen from disputing the rights of the alleged holders; but such payment for the use of the *jalkar* right is strong evidence of the rights of the alleged holders of the *ijara*, and of acquiescence in their title (*Hira Das Mala* v. *Mahamad Jaki*, Ind. 11 Cal. 434). A *jalkar* does not import any interest in the soil itself, and therefore the patni of a *jalkar* is not "an interest in land" within the meaning of the definition in the District Road Cess Act (*David* v. *Girish Chandra Guha*, Ind. 9 Cal. 182).

Saving for conditions binding on landlords.

Tenant not enabled by Act to violate conditions binding on landlord.

194. Where a proprietor or permanent tenure-holder holds his estate or tenure subject to the observance of any specified rule or condition, nothing in this Act shall entitle any person occupying land within the estate or tenure to do any act which involves a violation of that rule or condition.

This is new.

Savings for special enactments.

Savings for special enactments.

195. Nothing in this Act shall affect—

(*a*) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act;

(*b*) any enactment regulating the procedure for the realization of rents in estates belonging to the Government, or under the management of the Court of Wards or of the Revenue-authorities;

(*c*) any enactment relating to the avoidance of tenancies and incumbrances by a sale for arrears of the Government revenue;

(*d*) any enactment relating to the partition of revenue-paying estates;

(*e*) any enactment relating to patni tenures, in so far as it relates to those tenures; or

(*f*) any other special or local law not repealed either expressly or by necessary implication by this Act.

This is new.

The unrepealed enactments relating to the powers and duties of Settlement-officers are Regs. VII of 1822, IX of 1825, IV of 1828 and IX of 1833. Act VIII B. C. of 1879 has been expressly repealed by this Act.

The enactments regulating the procedure for the realization of rents in estates belonging to the Government or under the management of the Court of Wards or of the Revenue authorities are Acts VII B. C. of 1868 and VII B. C. of 1880. See these Acts in the Appendix.

The enactments relating to the avoidance of tenancies and encumbrances by a sale for arrears of the Government revenue are Acts XI of 1859 (secs. 37, 52, 53 and 54) and VII B. C. of 1868 (sec. 12). See these Acts in the Appendix.

The enactment relating to the partition of revenue-paying estates is Act VIII B. C. of 1876.

The enactments relating to patni tenures are Regs. VIII of 1819 and I of 1820, and Acts VI B. C. of 1853 and VIII B. C. of 1865. See these statutes in the Appendix.

Construction of Act.

Act to be read subject to Acts hereafter passed by Lieutenant-Governor of Bengal in Council.

196. This Act shall be read subject to every Act passed after its commencement by the Lieutenant-Governor of Bengal in Council.

This is new.

The reason of this section was thus explained by the Select Committee. "In the absence of some such provision as this, the Bengal Legislative Council would, owing to the wide extent of ground covered by this measure of the Supreme Legislature, find itself practically debarred for all time to come from dealing with almost every question affecting the relations of agricultural landlords and tenants."

Omissions of provisions of old Acts.

The end of the Act being reached, here may be pointed out some noticeable omissions of the provisions of the old Acts, which, not being connected with any provisions contained in this Act, have not been pointed out before.

1. The provisions of section 33 of Act X of 1859 and section 30 of Act VIII B. C. of 1869, providing for suits against agents for the recovery of money or the delivery of papers or accounts being brought within one year after the determination of the agency or knowledge of fraud, have been omitted. Such suits will now be governed by the general law, and the limitation will be three years.

2. The provisions of section 29 of Act X of 1859 and section 24 of Act VIII B. C. of 1869, providing that suits may be brought by or against sarbarakars or tehsildars of estates held under khas management, have been omitted. Such suits must now be brought by, or against, the Secretary of State for India in Council.

3. The provisions of sections 7 and 8 of Act VI B. C. of 1862 and of sections 48 and 49 of Act VIII B. C. of 1865, providing for the payment into Court, by the tenant of money tendered before suit without costs or of money admitted due with costs, have been omitted. But this omission is supplied by the provisions regarding payment into Court contained in Chapter XXIII of the Civil Procedure Code XIV of 1882.

4. The provisions of sections 11 and 12 of Act X of 1859 and sections 12 and 13 of Act VIII B. C. of 1869, withdrawing the power of landlords to compel the attendance of tenants and enacting penalty for extorting payment by duress, have been omitted. The omission does not revive the landlord's power (sec. 2, cl. 4); and the provisions of the Indian Penal Code are considered sufficient.

5. The peculiar provisions of the repealed statutes regarding the execution of decrees have been omitted. The provisions of the Civil Procedure Code would now apply.

6. The provisions of section 103 of Act VIII B. C. of 1869, prohibiting a review of judgment or order by any Court other than the High Court after the expiration of 30 days from the date of such judgment or order, have been omitted. The limitation will now be 90 days under art. 173 of Schedule II of Act XV of 1877.

7. The provisions of section 105 of Act VIII B. C. of 1869, allowing processes to be served free of charge if the Court was satisfied that the party is unable to pay the costs, have been omitted. No process may now be issued free of charge.

WEST BENGAL SECRETARIAT LIBRARY

SCHEDULE I.

(*See section* 2.)

REPEAL OF ENACTMENTS.

Regulations of the Bengal Code.

Number and year.	Subject of Regulation.	Extent of repeal.
VIII of 1793	A Regulation for re-enacting with modifications and amendments the rules for the Decennial Settlement of the Public Revenue payable from the lands of the zamindars, independent taluqdars and other actual proprietors of land in Bengal, Behar and Orissa, passed for those Provinces respectively on the 18th September, 1789, the 25th November, 1789, and the 10th February, 1790, and subsequent dates.	Sections 51, 52, 53, 54, 55, 64 and 65.
XII of 1805	A Regulation for the settlement and collection of the Public Revenue in the zila of Cuttack, including the parganas of Pattáspur, Kummadichour, and Bagrae, at present included in the zila of Midnapur.	Section 7.
V of 1812	A Regulation for amending some of the rules at present in force for the collection of the Land-revenue.	Sections 2, 3, 4, 26 and 27.
XVIII of 1812	A Regulation for explaining Section 2, Regulation V, 1812, and rescinding Sections 3, and 4, Regulation XLIV, 1793, and Sections 3 and 4, Regulation I, 1795, and enacting other rules in lieu thereof.	The preamble and sections 2 and 3.
XI of 1825	A Regulation for declaring the rules to be observed in determining claims to lands gained by alluvion or by dereliction of a river or the sea.	In clause 1 of section 4, from and including the words "nor if annexed to a subordinate tenure" to the end of the clause.

Acts of the Bengal Council.

Number and year.	Subject of Act.	Extent of repeal.
VI of 1862	An Act to amend Act X of 1859 (to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal).	The whole Act.
IV of 1867	An Act to explain and amend Act VI of 1862, passed by the Lieutenant-Governor of Bengal in Council, and to give validity to certain judgments.	The whole Act.
VIII of 1869	An Act to amend the Procedure in suits between Landlords and Tenants.	The whole Act.
VIII of 1879	An Act to define and limit the powers of Settlement-officers.	The whole Act.

Act of the Governor-General in Council.

Number and year.	Subject of Act.	Extent of repeal.
X of 1859	An Act to amend the law relating to the recovery of rent in the Presidency of Fort William in Bengal.	The whole Act.

SCHEDULE II.

FORMS OF RECEIPT AND ACCOUNT.

(*See sections 56 and 57.*)

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (LANDLORD'S PORTION).

1. Serial number of Receipt
2. Estate ; Village ; Tháná
3. Tenant's name , Son of
4. Particulars of the holding—

   Nukdi, Bighás ; rent Rs.

   Baouli, Bighás ; Maunds ; or Rs.

   Julkur, Rs.
   Bunkur, Rs.
   Phulkur, Rs.

   Government Cesses: Road Cess, Rs.; Public Works Cess, Rs.
5. Signature of the Landlord or his authorized Agent

FORM OF RECEIPT.

PARTICULARS OF THE HOLDING (TENANT'S PORTION).

1. Serial number of Receipt
2. Estate ; Village ; Tháná
3. Tenant's name , Son of
4. Particulars of the holding—

   Nukdi, Bighás ; rent Rs.

   Baouli, Bighás ; Maunds ; or Rs.

   Julkur, Rs.
   Bunkur, Rs.
   Phulkur, Rs.

   Government Cesses: Road Cess, Rs.; Public Works Cess, Rs.
5. Signature of the Landlord or his authorized Agent.

Section 55 of the Bengal Tenancy Act, 1885, provides as follows:—

(1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit.

SCHEDULE II.

DETAILS OF PAYMENTS (LANDLORD'S PORTION).

Date of payment, and name of person through whom paid.	Nukdi.		Baouli.		Julkur, &c.		Cesses.	
	Current on account of kist .	Arrear on account of year , kist .	Current on account of crop .	Arrear on account of year , crop .	Current on account of kist .	Arrear on account of year , kist .	Current on account of kist .	Arrear on account of year , kist .

DETAILS OF PAYMENTS (TENANT'S PORTION).

Date of payment, and name of person through whom paid.	Nukdi.		Baouli.		Julkur, &c.		Cesses.		Signature of the Landlord or his authorized Agent.
	Current on account of kist .	Arrear on account of year , kist .	Current on account of crop .	Arrear on account of year , crop .	Current on account of kist .	Arrear on account of year , kist .	Current on account of kist .	Arrear on account of year , kist .	

Particulars of the holding.—The heading, "Particulars of the holding," refers only to the particulars which are specified in the form of the receipt under the heading itself; that is to say, the area and rent, details being given in both respects for rent payable in cash and in kind, and a specification of rent payable on account of *julkur*, *bunkur*, *phulkur*, *&c.*, and also Government cesses. The amount of rent to be entered on the face of the receipt should be the annual rental of the holding on account of which the receipt is given. The details of payment as they are made should be entered in the place prescribed for that purpose on the reverse of the receipt. It is not necessary to specify in the form of the rent receipt, the interest of the tenant—whether he is a tenure-holder or a raiyat, or whether his rent is fixed or variable; or, if he is a raiyat, whether he has an occupancy right or not. As pointed out (*ante*, p. 177) the word 'holding' has been here used in the wide sense of 'tenancy.'

Area.—It will be difficult for the landlord always to specify the area. It must however be remembered that this particular shall be specified only when the landlord is able to do so (section 56, sub-section 3). If the area is omitted because the landlord has no data in his sherista from which he may specify it, or if it is omitted because there is a *bonâ fide* dispute between the parties as to the area which has not been settled, the presumption, of sub-section 4 of section 56,—of acquittance in full of all demands for rent up to the date,—will not arise.

Amount of rent.—Where the rent is one in kind fixed in proportion to the actual produce of the land and the land is do-fasli, the quantity of such rent cannot be specified before the second crop of the land has been gathered. It will therefore be not possible before such time for the landlord to specify the quantity of rent in kind payable for the year.

Interest.—There is no column or assigned space in the reverse of the form to shew payment of interest on arrears. The form only gives the particulars that *must* be specified where possible. There is no bar to the landlords making additions in it and dividing each column in the "Details of payment" into principal, interest and total. As the receipt should be for the full amount paid, this *should* be done whenever the tenant pays any interest.

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighás	Rate	Rs. A. P.
Nukdi			
Government Cesses ...	...	...	

	Bighás	Maunds	Rs. A. P.
Baouli			
Julkur ...	...	...	...
Bunkur ...	...	...	...
Phulkur ...	...	...	...

	Maunds	Rs. A. P.
4. Demand of the year ...	...	...
5. Balance of former years (Bakaya)...		...
		Rs. A. P.
6. Total demand (current and arrear)		...
7. Paid cash on account of { Current demand		...
Arrear demand		...
	Maunds	
8. Paid in kind ...	...	...
		Rs. A. P.

9. Balance outstanding at end of year
10. Signature of the Landlord or his authorized Agent

FORM OF ACCOUNT.

1. Year
2. Tenant's name
3. Particulars of holding—(area, rent, &c.)

	Bighás	Rate	Rs. A. P.
Nukdi			
Government Cesses ...	...	...	

	Bighás	Maunds	Rs. A. P.
Baouli			
Julkur ...	...	...	...
Bunkur ...	...	...	...
Phulkur ...	...	...	...

	Maunds	Rs. A. P.
4. Demand of the year ...	...	...
5. Balance of former years (Bakaya)		...
		Rs. A. P.
6. Total demand (current and arrear)		...
7. Paid cash on account of { Current demand		...
Arrear demand		...
	Maunds	
8. Paid in kind ...	...	...
		Rs. A. P.

9. Balance outstanding at end of year
10. Signature of the Landlord or his authorized Agent

SCHEDULE III.

LIMITATION.

(*See section* 184.)

PART I.—*Suits.*

Description of Suit.	Period of Limitation.	Time from which period begins to run.
1. To eject any tenure-holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach.	One year.	The date of the breach.
2. For the recovery of an arrear of rent—		
(*a*) when the arrear fell due before a deposit was made under section 61 on account of the rent of the same holding.	Six months.	The date of the service of notice of the deposit.
(*b*) in other cases	Three years.	The last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails.
3. To recover possession of land claimed by the plaintiff as an occupancy-raiyat.	Two years.	The date of dispossession.

Article 1.—The limitation prescribed in this article is for ejectment for breach of condition. For ejectment for misuse of the land of the tenancy the limitation is six years under article 120 of Schedule II of Act XV of 1877. Under the old law the limitation in both cases was six years under the latter article (*Kedar Nath Nag* v. *Kshetrapal Smritiratna*, Ind. 6 Cal. 34, 6 Cal. 569; *Ganes Das* v. *Gandour Kurmi*, 12 Cal. 418).

Article 3.—There was a conflict of decisions as to the period of limitation that would apply to a suit by a raiyat to recover possession of land claimed by right of occupancy. In some cases it was held that the period of limitation was one year (*Khasro Mandar* v. *Premlal*, 9 Beng. App. 41, 18 W. R. 403; *Brindaban Chandra Sarkar* v. *Dhananjay Laskar*, Ind. 5 Cal. 246). In other cases it

was held that the period of limitation was twelve years (*Jayanti Dasi* v. *Mahamad Ali Khan*, Ind. 9 Cal. 423). This article now settles the question by enacting a two-years' limitation in such cases. For simple possessory suits, the period of limitation is six months under section 9 of the Specific Relief Act I of 1877. This article applies where the raiyat sues for possession by establishing his right. The Rent Commission had recommended a one-year's limitation in such cases, but the period was extended to two years by the Legislature. The Commission said: "We have provided that one year shall be the period of limitation for a suit by a raiyat against his landlord to recover possession of a holding from which such raiyat has been illegally ejected by such landlord in any case not governed by section 9 of the Specific Relief Act I of 1877; in other words, for a suit intended to try not merely the question of dispossession without consent but *also a question of title*." (R. C. I. 71.)

PART II.—*Appeals.*

Description of Appeal.	Period of Limitation.	Time from which period begins to run.
4. From any decree or order under this Act, to the Court of a District Judge or Special Judge.	Thirty days.	The date of the decree or order appealed against.
5. From any order of a Collector under this Act, to the Commissioner.	Thirty days.	The date of the order appealed against.

PART III.—*Applications.*

Description of Application.	Period of Limitation.	Time from which period begins to run.
6. For the execution of a decree or order made under this Act, or any Act repealed by this Act, and not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1877.	Three years.	(1) The date of the decree or order; or (2) where there has been an appeal, the date of the final decree or order of the Appellate Court; or (3) where there has been a review of judgment, the date of the decision passed on the review.

Article 6.—When a proper application has been made for execution within 3 years, processes applied for in that application may issue after 3 years have elapsed (*Golakamani Devi* v. *Mahes Chunder Mosa*, Ind. 3 Cal. 547). But when an application for transfer of a decree for execution to another Court is made within three years, but the application for execution in the Court to which the decree is transferred is made after three years have elapsed, no process in execution of the decree may issue (*Bhola Nath Roy* v. *Narendra Nath Roy*, Ind. 9 Cal. 380, 12 Cal. 58). Where an application for execution was filed within three years, but wrongly returned for amendment instead of being dismissed and refiled after three years had elapsed, the application was held not barred by limitation (*Fazlar Rahman* v. *Altaf Hossen*, Ind. 10 Cal. 541).

In *Mumtazul Haq* v. *Ninbhai Sing*, Ind. 9 Cal. 711, it was held by a Full Bench, over-ruling the decision in *Garibulla Sarkar* v. *Mohan Lal Shaha*, Ind. 7 Cal. 127, that under section 58 of the Bengal Act VIII of 1869, where a decree for rent for less than 500 Rupees was made payable by instalments, limitation runs from the date of the decree and not from the dates on which the instalments were made payable ; and that a decree which made rent payable in instalments falling due after 3 years from the date of the decree was bad as incapable of execution. The absence in column 3 of this article of a paragraph like para. 5 in column 3 of article 179, Schedule II of the Limitation Act XV of 1877 would tend to shew that the above ruling stands good under the present Act.

Inclusive of the costs of executing such decree.—The incorporation of these words sets aside the ruling in *Kadambini Debi* v. *Kailas Chunder Pal Chowdhry*, Ind. 6 Cal. 554, where it was held that the costs of appeal in an execution-proceeding should not be added to the amount of the decree in calculating whether it amounted to more than Rs. 500.

What is continuation of an application in time?—The effect of an order striking off execution-proceedings in consequence of an adverse decision against the decree-holder under Act VIII of 1859, section 246, is not to dispose finally of the application for attachment and sale. And if the result of the regular suit prosecuted with due diligence is a final decree in his favour, and he makes an application for the execution of his decree, such application, whatever its form, is in substance one for the continuation of the former proceedings (*Babu Pyari Tahabildarinee* v. *Syad Nazir Hossein*, 23 W. R. 183). An application to execute a decree against a judgment-debtor's property, made more than three years after the last application for the execution, is not barred by limitation under article 167, Schedule II, Act IX of 1871, when the last application was interrupted by a successful objector against whom the decree-holder had to bring a regular suit and succeeded in obtaining a decree ; and the renewed applica-

tion to execute within three years from the date of the decree in the said suit is not a fresh application for execution against the judgment-debtor, but a continuance or revival of the previous application interrupted by the objector (*Parus Ram* v. *Gardner*, Ind. 1 All. 355). *A* obtained a decree against *B* on the 21st of June 1871, and applied for execution on the 10th of July following. On the 2nd of October of the same year property attached under such execution was sold, and the sale-proceeds being paid over to *A*, the execution-proceedings were struck off the file on the 28th of July 1872. On the 14th of May 1873, *B* obtained an order setting aside the sale and for refund of the sale-proceeds. *A* thereupon, on the 22nd of December 1874, again applied to execute his decree: *Held*, that such application was in substance one simply to continue the proceedings already set on foot by the first application for execution, and, therefore, the right to execute the decree was not barred by the law of Limitation (*Isvari Dasi* v. *Khalak*, Ind. 4 Cal. 415). Where an application for execution of a decree has been made within three years and granted, but the right to execute has been subsequently suspended on injunction or other obstacle, the decree-holder may apply for revival of the proceedings when the injunction or other obstacle is removed (*Kalyanbhai Dip Chand* v. *Ghanasvamlal Jadunathji*, Ind. 5 Bom. 29).

Fraud.—Fictitious alienation of his property by the judgment-debtor amounts to fraud and gives the decree-holder a right to proceed against other property of the judgment-debtor as well, after he has succeeded in a suit to render the property alienated available for attachment under his decree, even if he comes after the time allowed by law (*Visalalchi Ammal* v. *Sivasankara Taker*, Ind. 4 Mad. 293). A judgment-debtor, who, though able to pay his judgment-debt, dishonestly evades payment by eluding service of warrants and making applications to the Court, which had the effect of staying execution, is guilty of fraud (*Pattakara Annamalai Goundan* v. *Rangasvami Chetti*, Ind. 6 Mad. 365). A judgment-debtor, on seeing the Court's bailiff approach his house, chained the door and refused to open it when called on to do so by the bailiff: *Held*, that the conduct of the judgment-debtor amounted to a prevention by fraud of the execution of the decree (*Bhagu Jetha* v. *Malek Bawa Saheb*, Ind. 9 Bom. 318).

Appeal.—Where an appeal by one of several judgment-debtors relates to the whole case, limitation runs from the date of the order in appeal (*Mullik Ahmed Zumma* v. *Mahamad Syad*, Ind. 6 Cal. 194). But when a decree is made against two or more persons jointly, one of whom appeals against the decree only so far as it affects himself and not against the whole decree, and the defendants have not a common interest and a common defence so that an appeal by one would imperil the whole decree, then the fact of one defendant having appealed will not prevent limitation running in favour of the others against the execution of the decree (*Haraprasad Ray* v. *Enayet Hossen*, 2 Cal. 471; *Sangram Sing* v. *Bujharat Sing*, Ind. 4 All. 36).

APPENDIX.

APPENDIX.

REGULATION VIII OF 1819.

Passed on the 3rd of September 1819.

A Regulation to declare the validity of certain tenures, and to define the relative rights of zamindars and patni taluqdars, also to establish a process for the sale of such taluqs in satisfaction of the zamindar's demand of rent, *and to explain and modify other parts of the system established for the collection of rents generally throughout Bengal.*

Preamble.

1. By the rules of the perpetual settlement, proprietors of estates paying revenue to Government, that is, the individuals answerable to Government for the revenue then assessed on the different mahals, were declared to be entitled to make any arrangements for the leasing of their lands in taluq or otherwise, that they might deem most conducive to their interests.

By the rules of Regulation XLIV, 1793, however, all such arrangements were subjected to two limitations : first, that the jama or rent should not be fixed for a period exceeding ten years ; and, secondly, that in case of a sale for Government arrears, such leases or arrangements should stand cancelled from the day of sale.

The provisions of section 2, Regulation XLIV, 1793, by which the period of all fixed engagements for rent was limited to ten years, have been rescinded by section 2, Regulation V, 1812 ; and in Regulation XVIII of the same year it is more distinctly declared, that zamindars are at liberty to grant taluqs or other leases of their lands, fixing the rent in perpetuity at their discretion, subject, however, to the liability of being dissolved on sale of the grantor's estate for arrears of the Government revenue, in the same manner as heretofore.

In practice the grant of taluqs and other leases at a rent fixed in perpetuity had been common with the zamindars of Bengal for some time before the passing of the two Regulations last mentioned ; but, notwithstanding the abrogation of the rule which declared such arrangements null and void, and the abandonment of all

intention or desire to have it enforced as a security to the Government revenue in the manner originally contemplated, it was omitted to declare in the rules of Regulations V and XVIII of 1812, or in any other Regulations, whether tenures at the time in existence and held under covenants or engagements entered into by the parties in violation of the rule of section 2, Regulation XLIV, 1793, should, if called in question, be deemed invalid and void as heretofore.

This point it has been deemed necessary to set at rest by a general declaration of the validity of any tenures that may be now in existence, notwithstanding that they may have been granted at a rent fixed in perpetuity, or for a longer term than ten years, while the rule fixing this limitation to the term of all such engagements, and declaring null and void any granted in contravention thereto, was in force.

Furthermore, in the exercise of the privilege thus conceded to zamindars under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Raja of Bardwan, but has since been extended to other zamindaris; the character of which tenure is, that it is a taluq created by the zamindar, to be held at a rent fixed in perpetuity, by the lessee and his heirs for ever; the tenant is called upon to furnish collateral security for the rent and for his conduct generally, or he is excused from this obligation at the zamindar's discretion; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the zamindar.

By the terms also of the engagements interchanged, it is amongst other stipulations provided, that in case of an arrear occurring, the tenure may be brought to sale by the zamindar, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand.

These tenures have usually been denominated patni-taluqs, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons, who on taking such leases went by the name of darpatni taluqdars: these again sometimes similarly underlet to sepatnidars; and the conditions of all the title-deeds vary in nothing material from the original engagements executed by the first holder.

In these engagements, however, it is not stipulated whether the sale thus reserved to himself by the grantor is for his own benefit, or for that of the tenant; that is, whether in case the proceeds of sale should exceed the zamindar's demand of rent, the tenant would be entitled to such excess; neither is the manner of sale specified, nor do the usages of the country nor the Regulations of Government

afford any distinct rules, by the application of which to the specific cases, the defects above alluded to could be supplied or the points of doubt and difficulty involved in the omission be brought to determination in a consistent and uniform manner.

The tenures in question have extended through several zilas of Bengal, and the mischiefs which have arisen from the want of a consistent rule of action for the guidance of the Courts of civil judicature in regard to them have been productive of such confusion as to demand the interference of the legislature: it has accordingly been deemed necessary to regulate and define the nature of the property given and acquired on the creation of a patni-taluq as above described, also to declare the legality of the practice of underletting in the manner in which it has been exercised by patnidars and others, establishing at the same time such provisions as have appeared calculated to protect the under-lessee from any collusion of his immediate superior with the zamindar or other, for his ruin, as well as to secure the just rights of the zamindar on the sale of any tenure under the stipulations of the original engagements entered into with him.

It has further been deemed indispensable to fix the process by which the said tenures are to be brought to sale and the form and manner of conducting such sale;

and whereas the estates of zamindars under engagements with Government are liable to be brought to sale at any time for an arrear in the revenue payable by monthly kists to Government, it has seemed just to allow any zamindar who may have granted tenures with a stipulation of the right to sell for arrears, the opportunity of availing himself of this means of realizing his dues in the middle of the year, as well as at the close, instead of only at the end of the Bengal year, as heretofore allowed by the Regulations in force; it has further been deemed equitable to extend this rule to all cases in which the right of sale may have been reserved, even though, in conformity with the Regulations heretofore in force, the stipulation for sale contained in the engagements interchanged may have restricted such sale to the case of a demand of rent remaining unpaid at the close of the Bengal year.

It has been likewise deemed advisable to explain and modify some of the existing rules for the collection of rents, with a view to render them more efficacious than at present, as well as to provide against sundry means of evasion now resorted to by defaulters.

The following rules have accordingly been enacted by His Excellency the Most Noble the Governor-General in Council, to take effect from the date of their promulgation throughout the several districts of the Province of Bengal, including Medniipur.

The term 'patni-taluq' *primâ facie* conveys a hereditary and transferable interest in land (*Tarini Charan Gangooly* v. *Watson*, 3 Beng. A. C. 437). When a tenure is termed 'patni,' all the incidents mentioned in this Regulation attach to it in the absence of any express stipulation to the contrary (*Brindaban Chandra Sarkar* v. *Brindaban Chandra De*, 13 Beng. 409, 21 W. R. 324).

Leases fixing rent in perpetuity or for more than ten years, valid, though executed while section 2, Regulation XLIV, 1793, was in force.

2. It is hereby declared that any leases or engagements for the fixing of rent now in existence, that may have been granted or concluded for a term of years or in perpetuity, by a proprietor under engagements with Government, or other person competent to grant the same, shall be deemed good and valid tenures, according to the terms of the convenants or engagements interchanged, notwithstanding that the same may have been executed before the passing of Regulation V, 1812, and while the rule of section 2, Regulation XLIV. 1793, which limited the period for which it was lawful to grant such engagements to ten years, and declared all that might be entered into for a longer term to be null and void, was in full force and effect; and notwithstanding that the stipulations of the said leases may be in violation of the rule in question:

Provided, however, that nothing herein contained shall be held to exempt any tenures held under engagements from proprietors of estates paying revenue to Government, from the liability to be cancelled on sale of the said estates for arrears of the said revenue, unless specially exempted from such liability by the rule in question, or by any other specific rule of the Regulations in force.

The word '*mukarari*' does not by itself import a permanent tenure (*Government of Bengal* v. *Nawab Jaffer Hossen Khan*, 5 Moore, 467).

The words '*mukarari istemrari*' in a lease do not *per se* import a hereditary right in perpetuity without words of inheritance (*Tulsi Narain Sing* v. *Ram Narain Sing*, Ind. 12 Cal. 117).

Patni-tenures declared valid, transferable and answerable for debt.

3. *First.*—The tenures known by the name of patni-taluqs, as prescribed in the preamble to this Regulation, shall be deemed to be valid tenures in perpetuity, according to the terms of the engagements under which they are held. They are heritable by their conditions; and it is hereby further declared, that they are capable of being transferred by sale, gift or otherwise, at the discretion of the holder, as well as answerable for his personal debts, and subject to the process of the courts of judicature, in the same manner as other real property.

Patnidars' right of underletting.

Second.—Patni taluqdars are hereby declared to possess the right of letting out the lands composing their taluqs in any manner they may deem most conducive to their interest, and any engagements so entered into by such taluqdars with others

shall be legal and binding between the parties to the same, their heirs and assignees :

Provided, however, that no such engagements shall operate to the prejudice of the right of the zamindar to hold the superior tenure answerable for any arrear of his rent, in the state in which he granted it, and free of all incumbrance resulting from the act of his tenant.

Patni-tenures not voidable for arrears.

Third.—In case of an arrear occurring upon any tenure of the description alluded to in the first clause of this section, it shall not be liable to be cancelled for the same ; but the tenure shall be brought to sale by public auction, and the holder of the tenure will be entitled to any excess in the proceeds of such sale, beyond the amount of the arrear of rent due ; subject, however, to the provisions contained in section 17 of this Regulation.

Inferior tenures under similar title-deeds confer similar interest to that provided for patni-taluqs in section 3.

4. If the holder of a patni-taluq shall have underlet in such manner as to have conveyed a similar interest to that enjoyed by himself, as explained in the preamble to this Regulation, the holder of such a tenure shall be deemed to have acquired all the rights and immunities declared in the preceding section to attach to patni-taluqs, in so far as concerns the grantor of such under-tenure.

The same construction shall also hold in the case of patni-taluqs of the third or fourth degree.

Zamindar not to refuse to give effect to transfer;

5. The right of alienation having been declared to vest in the holder of a patni-taluq, it shall not be competent to the zamindar or other superior to refuse to register, and otherwise to give effect to such alienations, by discharging the party transferring his interest from personal responsibility, and by accepting the engagements of the transferee.

but may demand fee

In conformity, however, with established usage, the zamindar or other superior shall be entitled to exact a fee upon every such alienation ; and the rate of the said fee is hereby fixed at two per cent. on the jama or annual rent of the interest transferred, until the same shall amount to one hundred rupees, which sum shall be the maximum of any fee to be exacted on this account.

and security.

The zamindar shall also be entitled to demand substantial security from the transferee or purchaser, to the amount of half the jama or yearly rent payable to him from the tenure transferred ; the con-

dition of furnishing such security on requisition being understood to be one of the original liabilities of the tenure.

The above rules shall apply equally to the case of a sale made in execution of a decree or judgment of Court, as to all other alienations, but it shall not apply to the case of sale for an arrear in the rent due to the zamindar or other superior, under the rules hereinafter contained.

The purchaser at such a sale shall be entitled to have his name registered, and to obtain possession without fee, though of course liable to be called on to give security under the conditions of tenure purchased.

Zamindar may refuse sanction to transfer, till

6. It shall be competent to the zamindar or other superior to refuse the registry of any transfer until the fee above stipulated be paid, and until substantial security to the amount specified be tendered and accepted:

fee and security tendered.

provided, however, that if the security tendered by any purchaser or transferee should not be approved by the zamindar, and the party tendering it shall be dissatisfied with such rejection, he shall be competent to appeal therefrom by petition or common motion in the Civil Court of the district, which authority, if satisfied of the sufficiency of the security tendered, shall issue an injunction on the zamindar to accept it, and give effect to the transfer without delay.

It is hereby provided, that the rules of this and of the preceding section shall not be held to apply to transfers of any fractional portion of a patni-taluq, nor to any alienation other than of the entire interest; for no apportionment of the zamindar's reserved rent can be allowed to stand good, unless made under his special sanction.

Upon public sale, if security not tendered within one month, zamindar may attach.

7. In case of the sale of a patni-tenure in execution of a judgment of Court, if the purchaser do not, within the period of one month from the sale, conform to the rules of section 5 of this Regulation, in order to obtain the transfer of his tenure by the superior to whom the rent fixed upon it is payable, the zamindar or other superior shall be entitled, of his own authority, to send a sazawal to attach and hold possession of the tenure, until the forms prescribed be observed.

In case, also, of the sale of a patni-tenure for arrears of the rent due upon it, under the rules of this Regulation, if security be required by the zamindar, and the purchaser fail to furnish the same within one month of the date of sale, the zamindar shall similarly be entitled to send a sazawal to attach and hold possession of

the interest which may have passed on the sale, to the exclusion of the purchaser, until the prescribed security be given.

Attachment to have effect of trust.

Attachments made under this section shall be regarded as trusts for the benefit and at the risk of the purchasers : consequently, after deducting the rent due and the expense of attaching, any surplus that may be yielded by the collections shall be held in deposit for such purchaser : but if the collections for the time fall short of the rent, the tenure and person of the proprietor shall be liable in the same manner as if no attachment had been made, and the accounts produced by the zamindar or other superior making the attachment shall be received as *primâ facie* evidence to warrant process for an arrear so accruing.

Zamindars allowed sales of tenures, in which right to sell for arrears is reserved.

8. *First.*—Zamindars, that is, proprietors under direct engagements with the Government, shall be entitled to apply in the manner following for periodical sales of any tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure.

The exercise of this power shall not be confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but shall apply equally to tenures held under engagements stipulating merely for a sale at the end of the year, in conformity with the practice heretofore allowed by the Regulations in force.

First sale to be applied for on first of Baisakh.

Second.—On the first day of Baisakh, that is, at the commencement of the following year from that of which the rent is due, the zamindar shall present a petition to the Collector, containing a specification of any balances that may be due to him on account of the expired year, from all or any taluqdars or other holders of an interest of the nature described in the preceding clause of this section.

The same shall then be stuck up in some conspicuous part of the kachahri, with a notice that if the amount claimed be not paid before the first of Jeth following, the tenures of the defaulters will on that day be sold by public sale in liquidation.

Should, however, the first of Jeth fall on a Sunday or holiday, the next subsequent day, not a holiday, shall be selected instead ; a similar notice shall be stuck up at the sadr kachahri of the zamindar himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent to be similarly published at the kachahri or at the principal town or village upon the land of the defaulter.

The zamindar shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the mufassal shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager, for the same ; or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot.

If it shall appear from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the fifteenth of the month of Baisakh, it shall be a sufficient warrant for the sale to proceed upon the day appointed.

In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the kachahri of the nearest munsif, or if there should be no munsif, to the nearest thana, and there make voluntary oath of the same having been duly published ; certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.

A respectable mar of good character, well known in the neighbourhood, may properly be considered a substantial person within the meaning of this clause; it is too limited a construction to hold that the words must be taken to mean a wealthy person from whom damages could be recovered by the patnidar supposing the attestation to be false (*Ram Sebak Bose* v. *Kamini Kumari Dasi*, 14 Beng. 394). The provisions of this clause, which provides that a notice of sale under the Regulation shall be stuck up in the cutchary of the zamindar, are not complied with by serving the notice upon the zamindar himself or his agent. The object of the provisions is to make known to the holders of under-tenures and raiyats and the residents of the place that the patni will be sold if the arrears are not paid off within the time specified, and if the notice is not stuck up in the cutchary, as prescribed by the Regulation, there is such a material irregularity in the publication as will avoid the sale (*Gobind Lal Seal* v. *Hari Maity*, Ind. 9 Cal. 172; *Mahamad Zamir* v. *Abdul Hakim*, Ind. 12 Cal. 67). Although the provisions of this clause, specifying the manner in which proof should be given of service of notice of sale, are merely directory, it is, nevertheless, absolutely essential to the validity of a sale under the Regulation that the notice of such sale should be served in strict compliance with the directions given in the same clause and section of the Regulation: *Gouri Lal Sing* v. *Judhistir Hazra*, 25 W. R. 141, dissented from (*Bhagwan Chundra Das* v. *Sudder Ally*, Ind. 4 Cal. 41). The provisions of this clause, with regard to the notification of the sale of a patni-taluq for arrears of rent under this Regulation, that the serving peon shall " bring back the receipt of the defaulter or of his manager for the same, or in the event of inability to procure this, the signature of three substantial persons residing in the neighbourhood in attestation of notice having been brought and published on the spot," are merely directory, and where there is proof that the notice was in fact served, the sale will not be vitiated by non-compliance with any of these provisions, *e.g.*, as where one of the witnesses attesting the service of the notice turns out not to be " substantial" (*Ram Sebak Bose* v. *Kamini Kumari Dasi*, 14 Beng. 394). The publication of the notices prescribed by Regulation VIII of 1819, section 8, clause 2, forms an essential part of the foundation

on which the summary power to sell a patni-taluq for non-payment of rent is exercised by the zamindar, who, when instituting this proceeding, is exclusively responsible for such publication being regularly conducted. Although objection to the form of the receipt and the absence of the receipt itself need not be regarded if the fact of the due publication of the notices having been made is not a matter of controversy (as held in *Sona Beebee* v. *Lal Chand Chowdry*, 9 W. R. 242); yet where that fact was in doubt owing to the evidence of it not having been secured according to the provisions of the Regulation, a result due to the neglect of those representing the zamindar, due publication was held not to have been established by such proofs as were forthcoming (*Maharaja of Bardwan* v. *Tara Sundari Devi*, Ind. 9 Cal. 619).

Mid-year sale to be applied for on first of Kartik.

Third.—On the first day of Kartik, in the middle of the year, the zamindar shall be at liberty to present a similar petition, with a statement of any balances that may be due on account of the rent of the current year, up to the end of the month of Asin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first of Aghan, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartik, to less than one-fourth or a four-anna proportion of the total demand of the zamindar, according to the kistbandi, calculated from the commencement of the year to the last day of Kartik.

Sales how conducted.

9. All sales of saleable tenures applied for under the rules of this Regulation shall be made in public kachahri; the land shall be sold to the highest bidder, and every one not the actual defaulter shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter; fifteen per cent. of the purchase-money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.

If the fifteen per cent. be not paid in cash, or in notes of the Bank of Bengal, within two hours of the sale, or an equivalent amount in Government securities be not lodged, the lot shall be resold on the same day, and if the remainder of the purchase-money be not paid by noon of the eighth day, notice shall be given of resale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bazar of the sadr station of the zila, after which the lot shall be resold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per cent. already made, and be further answerable for any sum in which the proceeds of the second sale

may fall short of the antecedent one; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.

Forms to be observed in selling.

10. At the time of the sale, the notice previously stuck up in the kachahri shall be taken down, and the lots be called up successively in the order in which they may be found in that notice.

A person shall attend on the part of the zamindar, with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, together with the receipt for, or certificate of, the notice directed to be published in the mufassal, nor shall any lot be put up to sale until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read; the observance of which forms shall be recorded in a separate rubakari to be held upon each lot sold.

If the sale be of the description provided for in the third clause of section 8 of this Regulation, the kistbandi of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; nor shall the sale take place unless this be ascertained.

The zamindar shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the public officer making the sale be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Regulation.

Tenure to be sold free of incumbrance by act of defaulter.

11. *First.*—It is hereby declared, that any taluq or saleable tenure that may be disposed of at a public sale, under the rules of this Regulation, for arrears of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said taluq may have been held.

No transfer by sale, gift or otherwise, no mortgage or other limited assignment, shall be permitted to bar the indefeasible right of the zamindar to hold the tenure of his creation answerable, in the state in which he created it, for the rent, which is in fact his reserved property in the tenure, except the transfer or assignment should have been made with a condition to that effect, under express authority obtained from such zamindar.

Second.—In like manner, on sale of a taluq for arrears, all leases originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should have been especially transferred; the possessors of such interests must consequently lose the right to hold possession of the land and to collect the rents of the raiyats; this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.

No under-lease to stand after sale.

Third.—Provided, nevertheless, that nothing herein contained shall be construed to entitle the purchaser of a taluq or other saleable tenure intermediate between the zamindar and actual cultivators, to eject a khudkasht raiyat or resident and hereditary cultivator, nor to cancel *bonâ fide* engagements made with such tenants by the late incumbent or his representative, except it be proved in a regular suit, to be brought by such purchaser, for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor.

Exception in favour of *bonâ fide* engagements with raiyats.

The purchaser of a patni-taluq sued for a kabuliyat at an enhanced rent. The former patnidar had brought a similar suit and failed: *Held*, that the purchaser was bound by that decree (*Tara Prasad Mitra* v. *Ram Nursing Mitra*, 6 Beng. App. 5). In a suit by a purchaser of a patni at a sale for arrears of rent to enhance the rent of a ghatwal under Regulation VIII of 1819,—*held*, that ism-navisi papers for 1811 to 1813 stating that the land held by the ghatwal was 100 bighas, did not entitle the plaintiff to enhance the rent of the surplus over 100 bighas in the face of satisfactory oral evidence of long uninterrupted possession (*Erskine* v. *Dwarka Nath Sing*, 8 Beng. 504). The grantor of a patni-tenure, who subsequently purchases the tenure at a sale of the patni-tenure, does not revert *ipso facto* to the position he formerly held as a proprietor, and is not entitled to recover rent from the tenants at the rate he was receiving when he granted the patni without reference to the rent realized by the patni-holder in the interim (*Mojaram Ojha* v. *Raja Nilmoni Sing Dev*, 13 Beng. 198). The plaintiff, purchaser of a taluq sold for arrears of rent under Regulation VIII of 1819, brought a suit for khas possession of a tank within the taluq purchased by him which had been held by the defendant and her predecessors from a time anterior to the grant of the taluq: *Held*, that the relationship of landlord and tenant in which the parties stood did not prevent the application of the maxim *optimus interpres rerum usus*, and it was open to the defendant to shew by evidence as to the nature of the enjoyment what the origin of the tenure really was; and it being shewn that the interest in the tank had been frequently transferred during a period of more than sixty years without any change in the terms of the holding or the amount of rent paid, and that one of the transferees of the tank had been the owner of the taluq in which it was, it was *held* that the plaintiff was not entitled to a decree for khas possession (*Nidhi Krishna Bose* v. *Nistarini Dasi*, 13 Beng. 416). It is now finally settled that the sale of a patni-tenure for its own arrears does not *per se* avoid the

under-tenures but only renders them voidable at the option of the purchaser (*Ibrahim Malia* v. *Mahes Chandra Bagchi*, Ind. 9 Cal. 683).

Above rule to take effect retrospectively.

12. The rules of the preceding section being declaratory of the principle to be observed on all occasions wherein saleable tenures are made responsible for the zamindar's reserved rent, will equally apply to the case of taluqs heretofore sold, as to those that may be sold henceforward, if the sale shall have been fair, and the process observed in conducting it shall have been that recognized and in use in the district at the time of selling.

Proviso.

Nothing, however, herein contained shall operate to the prejudice of any agreement, express or implied, now subsisting between the purchaser of a taluq and the lessees of his predecessor.

But not to apply to private transfers.

Neither shall the rule for the fall of under-tenures be considered to apply to any private transfer by a taluqdar of his own interest, nor to a public sale in execution of a decree, nor to the case of a relinquishment by the taluqdar in favour of the zamindar, nor to any act originating with the former holder, other than default as aforesaid: all such operations involve only a transfer of the tenure in the state in which it may be held at the time, and the new incumbent succeeds to no more than the reserved rights of the former tenant, such as they may be, and is of course subject to any restriction put upon the tenure by his act.

Reason for allowing under-tenants means of staying sale.

13. *First.*—With reference to the injury that may be brought upon the holder of a taluq of the second degree by the operation of the preceding rules, in case the proprietor of the superior tenure purposely withholds the rent due from himself to the zamindar, after having realized his own dues from the inferior tenantry, it is deemed necessary to allow such taluqdars the means of saving their tenures from the ruin that must attend such a sale; and the following rules have accordingly been enacted for this purpose.

How under-tenants may stay sale.

Second.—Whenever the tenure of a taluqdar of the first degree may be advertised for sale in the manner required by the second and third clauses of section 8 of this Regulation, for arrears of rent due to the zamindar, the taluqdars of the second degree, or any number of them, shall be entitled to stay the final sale, by paying into Court the amount of balance that may be declared due by the person attending on the part of the zamindar on the day appointed for sale; in like manner they shall be entitled to lodge money antecedently, for the purpose of eventually answering any demand that may remain due on the day fixed for the sale, and should the

amount lodged be sufficient, the sale shall not proceed, but after making good to the zamindar the amount of his demand, any excess shall be paid back to the person or persons who may have lodged it.

The direction in section 13 of Regulation VIII of 1819, that money paid into Court by a taluqdar in order to stay the final sale shall be deducted from any claim of rent that may at the time be pending on account of the year or months for which the notice of sale may have been published, is satisfied by payment not into Court, but to the zamindar. If a strictly literal construction were put upon the words 'into Court,' no payment effectual to stay the sale could be made; for 'the Court' has nothing to do with these sales, which are managed by the Collector (*Turini Dabi* v. *Shamacharan Mitter*, Ind. 8 Cal. 954).

Procedure in case of amount lodged being rent due from under-tenant;

Third.—If the amount so lodged shall be rent due by the inferior taluqdar to the holder of the advertised tenure, the same shall be stated at the time of making the deposit, and the amount shall be carried to the account of the tenant or tenants lodging it, and be deducted from any claim of rent that may at the time be pending, or be thereafter brought forward against him or them by the proprietor of the advertised tenure, on account of the year or months for which the notice of sale may have been published.

and in case of amount lodged being advance from private funds.

Fourth.—If the person or persons making such a deposit, in order to stay the sale of the superior tenure, shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged is an advance from private funds, and not a disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against, future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the taluq so preserved shall be the security to the person or persons making the advance, who shall be considered to have a lien thereupon, in the same manner as if the loan had been made upon mortgage; and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in order to recover the amount so advanced from any profits belonging thereto.

If the defaulter shall desire to recover his tenure from the hands of the person or persons who, by making the advance, may have acquired such an interest therein, and entered on possession in consequence, he shall not be entitled to do so, except upon repayment of the entire sum advanced, with interest at the rate of twelve per cent. per annum up to the date of possession having been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced, with interest, has been realized from the usufruct of the tenure.

The word 'profits' in this clause means that which is left to the tenure-holder after payment of the rent of the tenure. A person who enters into possession of a tenure as mortgagee under the provisions of this section is bound in the first place to pay the rent due to the landlord out of the collections before applying the same to the liquidation of his own debt, and the defaulter is not liable for the rent of the tenure during the period of the possession by the person so holding it as mortgagee (*Lala Bhairab Chandra Karpur* v. *Lolit Mohun Sing*, Ind. 12 Cal. 185). An under-tenant, who has saved the superior tenure from sale by depositing the amount of rent due, has not only the security of the tenure he saves but also has a right to recover the amount deposited by him as a loan in an ordinary suit (*Ambika Devi* v. *Pranhari Das*, 4 Beng. F. B. 77). He is also entitled to deduct from any claim of rent against him for his under-tenure, the amount he deposited (*Nobogopal Sarkar* v. *Srinath Bandopadhya*, Ind. 8 Cal. 877).

Sale not to be stayed unless arrear claimed be lodged.

14. *First.*—Should the balance claimed by a zamindar on account of the rent of any under-tenure remain unpaid upon the day fixed for the sale of the tenure, the sale shall be made without reserve, in the manner provided for in sections 9 and 10 of this Regulation; nor shall it be stayed or postponed on any account, unless the amount of the demand be lodged.

But suit to lie for its reversal.

It shall, however, be competent to any party desirous of contesting the right of the zamindar to make the sale, whether on the ground of there having been no balance due, or on any other ground, to sue the zamindar for the reversal of the same, and upon establishing a sufficient plea, to obtain a decree with full costs and damages.

The purchaser shall be made a party in such suits, and upon decree passing for reversal of the sale, the Court shall be careful to indemnify him against all loss, at the charge of the zamindar or person at whose suit the sale may have been made.

Defaulter may apply for summary investigation.

Second.—In cases also in which a taluqdar may contest the zamindar's demand of any arrear, as specified in the notice advertised, such taluqdar shall be competent to apply for a summary investigation at any time within the period of notice; the zamindar shall then be called upon to furnish his kabuliyat and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale.

Sale not to be stayed unless amount claimed be deposited.

Such award, if so made, will of course regulate the ulterior process; but if the case be still pending, the lot shall be called up in its turn, notwithstanding the suit; and if the zamindar or his agent in attendance insist on the demand, the sale shall be made on his responsibility, nor shall it be stayed, or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash,

or in Government securities, or in notes of the Bank of Bengal, by the taluqdar contesting the demand; and if such deposit be not made, the alleged defaulter will have no remedy, but by a regular action for damages and for a reversal of the sale.

Where a patni-taluq has been sold under the provisions of Regulation VIII of 1819, an unregistered shareholder therein is entitled to sue for a reversal of the sale under the provisions of this section (*Chandra Prasad Roy* v. *Subhadra Kumari Saheba*, Ind. 12 Cal. 622). The defendants, after purchasing a patni-taluq at an auction-sale for arrears of rent under Regulation VIII of 1819, granted a darpatni lease to the plaintiffs (the former darpatnidars) and received a bonus of Rs. 1,199. The auction-sale being five years afterwards set aside,—*held* that the plaintiffs were entitled to a refund of the bonus, although they had not been dispossessed, but had simply reverted to their former position as darpatnidars under the former patnidar (*Tarachand Biswas* v. *Ram Gobind Chowdry*, Ind. 4 Cal. 778). The fact that the receipt of the notice of sale was dated the 15th of Baisakh, and therefore did not show that the notice had been published at some time "previous to that date," so as to satisfy the provisions of section 8, clause 2 of Regulation VIII of 1819, was held not to be sufficient ground for setting aside the sale of a patni-tenure for arrears of rent. There being nothing in the receipt to show the date on which the notice was published, no injury to the plaintiff having been proved, and it appearing that more than the time prescribed by the Regulation had elasped before the sale actually took place, the Court refused to set aside the sale. It would not be a "sufficient plea," within the meaning of section 14, that the receipt had been obtained, or the notification published, on, instead of previous to, the 15th of Baisakh (*Matungee Charan Mitter* v. *Murary Mohon Ghosh*, Ind. 1 Cal. 175). Where, in a suit to set aside a patni sale under Regulation VIII of 1819, it was proved that the notice of sale was first stuck up in the cutchary of the ijaradar (the mahal having been let out in ijara by the patnidar), and on the refusal of the ijaradar's gomasta to give a receipt for service, it was taken down, and subsequently personally served on the defaulting patnidar at his house, which was at some distance from the patni mahal,—*held*, that the object of the provisions in Regulation VIII of 1819, as to the service of notice of sale, is not only to give notice of sale to the defaulter, but also to the under-tenants, and to advertise the sale on the spot for the information of intending purchasers; but though those provisions had not been strictly complied with, yet as the plaintiff (the patnidar) did not allege that in consequence of the defective publication there was not a sufficient gathering of intending purchasers, nor that the under-tenants were ignorant of the sale, and were prejudiced by such ignorance, nor that the mahal was sold below its value,—*held*, that the defect did not amount to a "sufficient plea" under section 14 for setting aside the sale (*Gouri Lal Sing* v. *Judhistir Hajra*, Ind. 1 Cal. 359, 25 W. R. 141. But see *Bhagavan Chandra Das* v. *Sudder Ally*, Ind. 4 Cal. 41). When there was no attempt by the zamindar to publish the notification of the sale in the mufassal and there was further a grave irregularity in sticking up the notice of sale in the Collector's kachahri, it was *held* that these defects were sufficient to vitiate the sale (*Baikunta Nath Sing* v. *Maharaja Mahtab Chand Bahadur*, 9 Beng. 87).

Delivery of possession to purchaser.

15. *First.*—So soon as the entire amount of the purchase-money shall have been paid in by the purchaser at any sale made under this Regulation, such purchaser shall receive from the officers conducting the sale a certificate of such payment.

The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the kachahri of the zamindar, and upon furnishing security, if required, to the extent of half the jama or annual rent, he shall receive the usual 'amaldastak' or order for possession, together with the notice to the raiyats and others to attend and pay their rents henceforward to him.

The zamindar shall also be bound to furnish access to any papers connected with the tenure purchased, that may be forthcoming in his kachahri; and should he in any manner delay the transfer in his office, or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished or tendered on requisition, the new purchaser shall be entitled to apply direct to the Court, and he shall receive the orders for possession, and shall be put in possession, of the lands by means of the nazir, in the same manner as possession is obtained under a decree of Court; provided, however, that if the delay be on account of the zamindar's contesting the sufficiency of the security tendered, the rule contained in section 6 of this Regulation shall be observed.

If there was no arrear of rent at the date of sale, whether notice of the fact had been given to the Collector or not, the sale must be set aside (*Sarup Chandra Bhoomi* v. *Raja Protap Chandra Sing*, 5 W. R. 218). A certificate of payment granted under this clause is admissible in evidence without being registered (*Abdul Aziz Biswas* v. *Radhakant Kabiraj*, Ind. 5 Cal. 226).

Procedure in case of opposition to purchaser.

Second.—When the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself, or the holders of tenures or assignments derived from the late incumbent, and intermediate between him and the actual cultivators, shall attempt to offer opposition, or to interfere with the collections of the new purchaser, from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Civil Court for the aid of the public officers in obtaining possession of his just rights.

A proclamation shall then issue under the seal of the Court and signature of the Judge, declaring that the new incumbent having, by purchase at a sale for arrears of rent due to the zamindar, acquired the entire rights and privileges attaching to the tenure of the late taluqdar, in the state in which it was originally derived by him from the zamindar, he alone will be recognized as entitled to make the zamindari collections in the mufassal, and no payments made to any other individual will on any account be credited to the raiyats or others in any suit for rent or on any other occasion whatever when the same may be pleaded.

Procedure in case of continued opposition.

Third.—Should the late incumbent or his late under-tenants continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason

to apprehend a breach of the peace on the part of any one, the aid of the Police-officers and of all other public officers who may be at hand and capable of affording assistance, shall be given to the new purchaser, on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

If, by reason of the patnidar's not giving security, the zamindar withholds his amaldastak and also abstains from availing himself of the power which the law gives him of collecting the rent himself, the zamindar is not entitled to recover from the patnidar the rent which his withholding the amaldastak has prevented the patnidar from collecting (*Srimati Bedhumukhi Devi* v. *Raja Nilmani Sing Dev*, 1 Cal. 464).

16.—[*Repealed by Bengal Act No. VIII of 1865.*]

Disposal of proceeds of sale.

17. *First.*—The following rules have been enacted for the disposal of the proceeds of any sale made under the rules of this Regulation.

Deduction on account of Government.

Second.—One per cent. shall first be deducted from the nett proceeds realized, and shall be carried to the account of Government, for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for carrying into effect the provisions of this Regulation.

Payment to zamindars.

Third.—The balance on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the taluq to sale) to the zamindar or other person to whom the same may be due; provided, however, that no former balances, beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), shall be included in the demand to be thus satisfied.

Such antecedent balances, if the zamindar shall have omitted to avail himself of the process within his reach for having them satisfied at the time, will have become in fact mere personal debts of the individual taluqdar, and must be recovered in the same way as other debts by a regular suit in the Court.

Disposal of remainder.

Fourth.—Any excess that may remain after satisfying the demand of the zamindar, in the manner above described, shall be forthwith sent by the officer conducting the sale to the treasury of the Collector or Assistant Collector of the district, to be there held in deposit to answer the claims of the taluqdars of the second degree, or of others who, by assignment of the defaulter, may be at the time in possession of a valuable interest on the land composing the taluq sold, or on any part of it.

In order to prevent the sale of a taluq under Regulation VIII of 1819, the plaintiffs, to whom the taluq had been mortgaged under a bond which provided that the amount advanced thereunder should be a charge on the surplus proceeds in the event of a sale, paid the amount of arrears due: *Held*, that the plaintiff as mortgagee had a sufficient interest to protect, that the payment was not voluntary, and that the amount of such payment was a valid charge on the property (*Mohes Chandra Banerjee* v. *Ramprasanna Chowdhuri*, 6 Cal. 28).

Under-tenants free to prosecute for price of their interest or compensation.

Fifth.—It shall be competent to any one conceiving himself to possess such an interest to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale.

If the Court shall, on investigation, consider the plaintiff's claim to be an equitable one, the Court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances.

If there be more claimants than one, payment shall not be made from the deposit, until the whole of the claims be settled; and in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realized from him by the usual process for the execution of decrees.

The patnidar of a taluq granted a darpatni to the defendants on the 10th of February 1869. The same patnidar afterwards mortgaged the patni-taluq to the plaintiffs, who obtained a decree on their mortgage on the 28th September 1874. The patni was sold for its own arrears on the 17th November 1876; and after payment of rent and all expenses, there remained a surplus in the hands of the Collector, which was attached by the plaintiffs in execution of their decree on the 9th of November 1876. On the 12th January 1877, the defendants instituted a suit against the patnidar, under clause 5, section 17, Regulation VIII of 1819, for compensation for the loss of the darpatni, and obtained a decree, which the Court directed should be satisfied out of the surplus sale-proceeds; and the Collector, notwithstanding the plaintiffs' attachment, allowed the defendants to obtain the amount decreed out of the surplus sale-proceeds. In a suit by the plaintiffs to recover the amount paid for compensation, on the ground that the plaintiffs' attachment was prior to the defendants' suit,—*Held*, that the defendants' decree must, notwithstanding the plaintiffs' attachment, be satisfied out of the surplus sale-proceeds in priority to the plaintiffs' decree (*Sarnamayi Dasya* v. *The Land Mortgage Bank of India Limited*, Ind. 7 Cal. 173).

Suit not to lie if under-tenant be himself in arrears at time of sale.

Sixth.—Provided, however, that no taluqdar of the second degree or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such tenure

or assignment upon its becoming cancelled by sale of the superior taluq, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose prior to the date of sale.

Seventh.—Should no claims upon the purchase-money of a taluq sold as above be brought forward by any under-tenants or assignees, within the period of two months from the date of sale, or should the amount claimed by those who may have sued not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the Court for the amount so held in deposit, or for the excess thereof, as the case may be, and he shall receive a certificate under the seal of the Court, of there being no claims to afford ground of detention for the whole or any part of the deposit; and upon exhibiting such certificate to the Collector, the amount set free thereby shall be paid to his receipt.

When defaulter to receive excess unclaimed.

In the same manner, upon executing a decree passed in favour of any under-tenants or assignees, they shall receive certificates under the seal of the Court, declaring the amount adjudged to them out of the deposit; and upon exhibiting these certificates, the amount shall be paid severally to their receipts by the Collector.

Eighth.—It shall be competent to any party interested in a deposit, to withdraw the whole or any part thereof, on substituting Government securities, bearing interest, in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day, as shown by the Government Gazette last received.

Substitution of Government securities for cash in deposit.

REGULATION I OF 1820.

Passed on the 11th of January 1820.

A Regulation for providing that all sales of certain taluqs, made answerable by sale for arrears of the zamindar's rent, shall be conducted in the mode prescribed by Regulation VIII, 1819, for the sales therein described.

1. WHEREAS it has been omitted to provide in the rules of Regulation

Preamble.

VIII, 1819, whether, in case the proprietor of an estate paying revenue to Government should desire to bring to sale a saleable tenure of the nature defined in clause first, section 8, of that Regulation, for the realization of arrears of rent due thereupon, by any legal process other than that prescribed by the second and third clauses of the said section, such sale should be made in the public manner provided for the periodical sales therein described ;

and whereas it is consonant with justice, and was intended by the said Regulation, that, in every case of the sale of such tenures for arrears of the zamindar's rent, the sale should be public, for the security of the interests of the owner of the tenure sold ; which object can in no manner be duly secured except the sales to be so made be conducted by an officer of Government in the same manner as the periodical sales provided for by section 8 of the said Regulation :

the following additional rule has accordingly been passed by the Governor-General in Council, to take effect from the date of its promulgation, within the several districts of Bengal, including Mednipur.

Rules of Regulation VIII, 1819, for periodical sales for zamindar's arrears of rent, extended to other sales for rent.

2. *First.*—Whenever the proprietor of an estate paying revenue to Government shall desire to cause any tenure of the nature of those described in clause first, section 8, Regulation VIII, 1819, to be sold for arrears of rent due to him on account thereof, and shall, under any summary process authorized by the general Regulations, have acquired the right of causing such sale to be made, the same shall be conducted, after application from the zamindar, by the Register or acting Register of the Zila or City Court, or, in his absence, by the person in charge of the office of Judge of the district, in the mode prescribed by Regulation VIII above quoted, for periodical sales.

Notice by proclamation.

Second.—Ten days' notice shall be given before proceeding to sale, by proclamation to be stuck up at the kachahri of the Court and at that of the Collector of the district.

Rules extended to sales hereunder.

Third.—The rules of sections 9, 11, 13, 15 and 17, Regulation VIII, 1819, are extended to all sales made after the manner herein provided.

ACT No. VI OF 1853.

Passed on the 15th of April 1853.

An Act relating to summary suits for arrears of rent, to sales of patni-taluqs and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent.

Preamble.

WHEREAS, by Regulation VIII, 1831, of the Bengal Code the hearing and decision of summary suits or claims relating to arrears or exactions of rents were transferred from the Judges of the zila or city Courts to the Collectors of land-revenue of the several districts ;

and whereas by Regulation VII, 1832, of the Bengal Code the conduct of sales of patni-taluqs and other saleable tenures under Regulations VIII, 1819, and I, 1820, of the same Code, and the performance of other acts preparatory to, or connected with, such sales, were transferred to the Collector or Deputy Collector of land-revenue or head assistant to the Collector or Deputy Collector, subject to an appeal as therein provided ;

and whereas by Act VIII, 1835, the power theretofore vested in the Judges of the Dewani Adalat of selling land in satisfaction of summary decrees for rent was transferred to the Collectors of land-revenue, and it was enacted that all sales for the recovery of arrears of rent held under clause 7, section 15, Regulation VII, 1799, should be conducted by the Collector, his Deputy or duly authorized Assistant, and that ten days' notice should be given of such sales by advertisement to be stuck up at the kachahri of the zila Court or local Adalat and that of the Collector ;

and whereas it is expedient that Act XXV, 1850, and section 9, Regulation VIII, 1819, of the Bengal Code, as modified by clause 1, section 16, Regulation VII, 1832, of the same Code, and as altered by the said Act XXV, 1850, should be extended to sales under Act VIII, 1835 ;

and whereas doubts may be entertained as to who ought to exercise the jurisdiction transferred by the abovementioned Regulations and Acts, where lands situate within the zila or other district of one Collector form part of an entire estate paying revenue to the Collector of another zila or district :

In order therefore to avoid such doubts, and also to define who are the proper officers to exercise such jurisdictions in cases where lands are situate in a district assigned to an independent Deputy Collector, and also in cases where lands held

in patni or other tenure at one entire rent are situate in two or more collectorates, and to prevent any such decision or sale already made from being held invalid upon the ground of its having been made by an officer of a wrong district ; It is enacted as follows :—

Conduct of sale of lands when all in one collectorate.

1. If the lands which may be the subject of any such sale, or to the rent of which any such suit may relate, be all situate in one collectorate, the Collector of such collectorate is the Collector to conduct the sale or to hear and decide the suit.

When in two or more collectorates.

If one taluq or tenure shall comprise lands situate in two or more collectorates, or if any lands situate in two or more collectorates be held under one lease or engagement or at one entire rent, the Collector in whose collectorate the greater part of such lands shall be situate is the Collector to conduct the sale of such taluq or tenure or of such lands, and to hear and decide any summary suit relating to arrears or exactions of rent in respect thereof.

Procedure in case of doubt as to officer having jurisdiction.

2. If a Collector to whom application shall be made to exercise any of the powers abovementioned shall entertain any doubt as to whether the lands or the greater part of them are situate within his collectorate, he shall report the case for the order of the Board to which he is subordinate, and if ordered by such Board to proceed in the matter, such order shall be conclusive upon the question of his jurisdiction.

"Collectorate" defined.

3. The word "Collectorate" in this Act means the zila or other district to which a Collector is appointed, and no lands situate beyond the limits of such zila or district shall be deemed to be situate within the collectorate, by reason of their forming part of an estate paying revenue to the Collector thereof.

Powers and jurisdiction of independent Deputy Collector.

4. An independent Deputy Collector may, within his deputy collectorate, exercise all the powers and jurisdictions of a Collector with which he may be entrusted, in the same manner and to the same extent as a Collector may do within his collectorate ; and with reference to the exercise of such powers and jurisdictions, his deputy collectorate shall be deemed a collectorate, and he shall be deemed to be a Collector within the meaning of this Act.

"Independent Deputy Collector."

5. An "independent Deputy Collector" is an officer appointed by Government to act as Deputy Collector independently of a Collector, whether his office is one for the receipt of revenue or not.

A "deputy collectorate" is the district within which an independent Deputy Collector is directed by Government to act.

"Deputy collectorate."

6. In cases of sales by an independent Deputy Collector under the abovementioned Regulations or Act, any notice thereby required to be stuck up at the kachahri of the Collector, may be stuck up at the kachahri of the Deputy Collector.

Publication of notice of sale by independent Deputy Collector.

7. An independent Deputy Collector may exercise the powers assigned to him over any part of his deputy collectorate in public kachahri, in whatever part of his deputy collectorate the same may be situate or held.

Exercise of powers of independent Deputy Collector.

8. Any notice required by the abovementioned Regulations or Act to be given by advertisement to be stuck up at the kachahri of the zila Court or local Adalat, shall be stuck up at the zila Court or local Adalat within the jurisdiction of which the lands to be sold, or the greater portion of them, as the case may be, shall be situate.

Publication of notice required by law to be advertised.

ACT No. VIII B. C. OF 1865.

Received the Lieutenant-Governor's assent on the 10th of May 1865, and the Governor-General's assent on the 27th idem.

An Act to amend the law for the sale of such under-tenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of arrears of rent due in respect thereof.

Preamble.

WHEREAS doubt have arisen, in consequence of the repeal of section 16 of Regulation VII of 1832, as to the authority by whom patni-taluqs and other saleable under-tenures of the nature defined in clause 1 of section 8 of Regulation VIII of 1819 are to be sold for arrears of rent due to the proprietor on account thereof; and whereas it is expedient to amend the law for the sale of under-tenures in satisfaction of decrees for the recovery of such arrears; It is enacted as follows:—

"Collector" defined.

1. The word "Collector" as used in this Act includes all officers exercising the full powers of a Collector of a district.

Number.

Words used in the singular number include the plural.

2.—[*Repealed by Act No. XII of* 1873.]

Sale by whom conducted.

3. The sale for the recovery of arrears of rent of patni-taluqs and other saleable under-tenures of the nature defined in clause 1 of section 8 of Regulation VIII of 1819 shall be conducted by the Collector of land-revenue in whose jurisdiction, as defined by Act VI of 1853, the lands lie, and all acts preparatory to, or connected with, the sale of such under-tenures as aforesaid, which, by Regulations VIII of 1819 and I of 1820, the Judge is required to perform, shall be performed by the said Collector.

Publication of notice of sale.

4. Whenever a decree for an arrear of rent, due in respect of an under-tenure saleable under the provisions of section 105 of Act X of 1859, shall have been obtained, and an application for the sale of the said under-tenure under the same section shall have been made and allowed, the Collector, in whose Court the decree is in course of execution, shall thereupon cause to be hung up in his own Court and in that of the Collector and the Judge of the district within which the land comprised in the under-tenure to be sold is situated, and to be affixed on some conspicuous place on the land and in the town or village in or nearest to which the said land is situated, a notice for the sale of the said under-tenure on some fixed date not less than twenty days from the hanging-up of the said notice in the Court in which the decree is in course of execution.

Contents of notice of sale.

5. The said notice shall specify, in the words used in the plaint in the suit in which the decree was made, the name of the village, estate and pargana, or other local division, in which the land comprised in the said under-tenure is situated, the yearly rent payable under the said under-tenure, and the gross amount recoverable under the said decree.

How sale may be stopped.

6. If the sum due under the decree, together with interest to date of payment and all costs of process, be paid into Court at any time before the sale commences, whether by the defaulting holder of the under-tenure or any one on his behalf, or any one interested in the protection of the under-tenure, such sale shall not take place; and the provisions of section 13 of Regulation VIII of 1819, for the recovery of sums paid by other than the defaulting holder of the under-tenure to stay the sale of the under-tenure, shall be applicable to all similar payments made under this section.

Sale to highest bidder.

7. The under-tenure shall be sold to the highest bidder in open Court.

8. The party who shall be declared to be the purchaser shall be required to deposit immediately, in cash or Government currency-notes, twenty-five per cent. of the amount of his bid; and, in default of such deposit, the under-tenure shall be put up again and sold forthwith, or on the next ensuing office-day.

Deposit by purchaser.

9. The full amount of the purchase-money shall be made good by the purchaser before sunset of the eighth day from that on which the sale of the under-tenure took place, reckoning that day as one of the eight; or, if the eighth day be a Sunday or other close holiday, then on the first office-day after the eighth day: and, in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to the Government, and the under-tenure shall be re-sold, and the defaulting purchaser shall forfeit all claims thereto or to any part of the sum for which the said under-tenure may be subsequently sold.

Deposit forfeited if balance of purchase-money not paid up.

If the proceeds of the sale which may be eventually completed be less than the price bid, by the defaulting purchaser, the difference shall be leviable from him under the law for enforcing the payment of money in satisfaction of a decree for arrears of rent.

10. The provisions of all the sections of this Act with regard to sales shall also be applicable to all re-sales under this Act, which may be rendered necessary by the default of any purchaser.

Provisions as to sales to apply to re-sales.

11. When the purchase-money shall have been paid in full, the officer holding the sale shall give the purchaser a certificate in the form prescribed in the schedule annexed to this Act; and shall further, on the purchaser making application and depositing the requisite costs, depute an officer or amin to put him in possession of the under-tenure in the customary manner, and to publish the fact of the purchase to cultivators of the lands comprised therein.

Certificate and possession to be given to purchaser on payment in full.

12. From the proceeds of the sale of the under-tenure, the officer holding such sale shall repay to the judgment-creditor the necessary expenses incurred by him in procuring it; and, after satisfying the decree in execution of which the sale was made, shall hold the residue, if any, in deposit on account of the defaulting holder of the under-tenure.

Proceeds of sale how dealt with.

13. An appeal shall lie to the Collector from any proceedings of a Deputy or Assistant Collector, if made within fifteen days; and to the Commissioner from any original proceedings of a

Appeal.

Collector under this Act, if made within thirty days from the date of the sale: but no proceedings under this Act shall be reversed or modified in appeal, except upon the ground of irrelevancy of the law, or of such an irregularity in procedure as, in the opinion of the appellate authority, has caused injury to the interests of one of the parties to the suit in which the decree was passed.

Power of revision.

14. No appeal as of right shall lie from any order passed in appeal under this Act; but a Commissioner in any case in which an appeal has been heard by a Collector, and the Board of Revenue in any case in which an appeal has been heard by the Commissioner, may call for the record at any time within three months from the date of the order passed in appeal, and pass thereon such orders as they may think proper.

Recovery by purchaser of purchase-money if sale set aside.

15. If any sale of an under-tenure shall, under either of the two preceding sections, be set aside, the purchaser shall be entitled to receive back the purchase-money with or without interest, and in such manner as the appellate or revising authority may in each instance direct.

Any order for the recovery of the purchase-money or interest, passed by such appellate or revising authority as aforesaid, may be enforced by the process in force under decrees for the recovery of arrears of rent.

Purchaser to acquire the under-tenure, with certain exceptions, free of incumbrances.

16. The purchaser of an under-tenure sold under this Act shall acquire it free from all incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which the under-tenure was created, or by the subsequent written authority of the person who created it, his representatives or assignees.

Provided that nothing herein contained shall be held to entitle the purchaser to eject khudkasht raiyats or resident and hereditary cultivators, nor to cancel *bonâ fide* engagements made with such class of raiyats or cultivators aforesaid by the late incumbent of the under-tenure or his representatives, except it be proved, in a regular suit, to be brought by such purchaser for the adjustment of his rent, that a higher rent would have been demandable at the time such engagements were contracted by his predecessor.

Nothing in this section shall be held to apply to the purchase of a tenure by the previous holder thereof, through whose default the tenure was brought to sale.

The purchaser of an under-tenure, the rent of which is in arrear, cannot be made *personally liable* for that portion of the rent which accrued due before the date of his purchase (*Rashvihari Banerjee* v. *Pyari Mohan Mukerjee*, 3 Cal. 116). A certain chur having been converted into two estates paying Government revenue, the plaintiffs became the purchaser of one of these estates at a sale for arrears of revenue and of a howla lease of the other at an auction-sale for arrears of rent and brought a suit under section 37 of Act XI of 1859 and section 16 of Act VIII B. C. of 1865 to avoid the tenures of the defendants who held in shikmi taluqdari and howladari tenure, lands appertaining to both estates. The defendants admitted the alleged nature of their holdings but claimed exemption from eviction on the ground that their ancestor, more than 12 years before, had cleared and cultivated the land and built a house thereon, and that since his death they themselves had continued to cultivate the land and reside upon it: *Held*, that the defendants were entitled to the benefit of the proviso in section 16 of Act VIII B. C. of 1865, the words of that proviso being wide enough to embrace every resident and hereditary cultivator *irrespective of his denomination* (*Sheikh Mohamud Ahsanollah Chowdhry* v. *Shamser Ali*, 4 Cal. 165).

Zamindar how to proceed if purchaser do not register.

17. The purchaser of an under-tenure sold under this Act shall apply to the zamindar or other landholder, within fifteen days from the day of sale, to have his name registered in the zamindar or other landholder's books as the purchaser; and shall execute a kabuliyat on the same terms and conditions on which the under-tenure was held by the defaulter; and, if such application be not made within fifteen days, it shall be lawful for the zamindar or other landholder to sue the said purchaser under the provisions of clause 1 of section 23 of Act X of 1859.

Schedule referred to in section 11.

I certify that *A B* has purchased, under Act VIII of 1865, the under-tenure (*as specified in the notice of sale*), and that his purchase took effect on the day of (*being the day after that fixed for the last day of payment*).

(Signed) *C. D.*,
Collector.

REGULATION XXIX OF 1814.

Passed on the 3rd of December 1814.

A Regulation for the settlement of certain mahals in the district of Birbhum, usually denominated the Ghatwali mahals.

1. WHEREAS the lands held by the class of persons denominated Ghatwals,

Preamble.

in the district of Birbhum, form a peculiar tenure to which the provisions of the existing Regulations are not expressly applicable;

and whereas every ground exists to believe that, according to the former usages and constitution of the country, this class of persons are entitled to hold their lands, generation after generation, in perpetuity, subject nevertheless to the payment of a fixed and established rent to the zamindar of Birbhum, and to the performance of certain duties for the maintenance of the public peace and support of the Police;

and whereas the rents payable by those tenants have been recently adjusted after a full and minute inquiry made by the proper officers in the Revenue Department;

and whereas it is essential to give stability to the arrangements now established among the Ghatwals, the following rules have been adopted, to be in force from the period of their promulgation in the district of Birbhum.

Ghatwals in Birbhum, and their descendants in perpetuity, to be maintained in possession of lands, and not liable to enhancement of rent.

2. A settlement having lately been made on the part of the Government with the Ghatwals in the district of Birbhum, it is hereby declared that they and their descendants in perpetuity shall be maintained in possession of the lands, so long as they shall respectively pay the revenue at present assessed upon them, and that they shall not be liable to any enhancement of rent so long as they shall punctually discharge the same and fulfil the other obligations of their tenure.

Ghatwali lands to form part of zamindari of Birbhum. Rents how paid.

3. The ghatwali lands shall be considered, as at present, to form a part of the zamindari of Birbhum; but the rents of Ghatwals shall be paid direct to the Assistant Collector stationed at Suri, or to such other public officer as the Board of Revenue, with the sanction of the Governor-General in Council, may direct to receive the rents.

Amount payable to zamindar of Birbhum.

4. The difference between the amount of the revenue assessed on the Ghatwals and the fixed assessment of revenue in this portion of the zamindari of Birbhum payable to Government, shall be paid to the zamindar of Birbhum, and his heirs and successors, in perpetuity.

Disposal of tenure of Ghatwals failing to discharge rents.

5. Should any of the Ghatwals at any time fail to discharge their stipulated rents, it shall be competent for the Governor-General in Council

to cause the ghatwali tenure of such defaulter to be sold by public sale in satisfaction of the arrears due from him in like manner, and under the same rules, as lands held immediately of Government, or to make over the tenure of such defaulter to any person whom the Governor-General in Council may approve on the condition of making good the arrear due; or

to transfer it by grants assessed with the same revenue, or with an increased or reduced assessment, as to the Government may appear meet; or

to dispose of it in such other form and manner as shall be judged by the Governor-General in Council proper.

Should any increase of revenue be obtained from the operation of any arrangements of the nature above described, such increase shall be paid in conformity to the tenor of the preceding article to the zamindar of Birbhum, his heirs and successors.

See notes under Section 181 of the Bengal Tenancy Act, *ante*, pp. 379-384.

ACT No. V OF 1859.

Received the Governor-General's assent on the 4th of March 1859.

An Act to empower the holders of ghatwali-lands in the district of Birbhum to grant leases extending beyond the period of their own possession.

Preamble.

WHEREAS it has been held that the ghatwals of the district of Birbhum who pay the revenue of their lands directly to Government under the provisions of Regulation XXIX, 1814, of the Bengal Code have not the power of alienating their lands; and whereas, for the development of the mineral resources of the country in which the said ghatwali-lands are situate, and for the improvement of the said lands, it is expedient that the power of granting leases for periods not limited by the term of their own possession, should in certain cases be extended to the possessors of such lands; It is enacted as follows:—

Right of ghatwals of Birbhum to grant leases.

1. Ghatwals holding lands in the district of Birbhum under the provisions of the aforesaid Regulation, shall have the same power of granting leases for any period which they may deem most conducive to the improvement of their tenures, as is allowed by law to the proprietors of other lands.

Provided that no lease of ghatwali-lands for any period extending beyond the life-time or incumbency of the grantor of the lease shall be valid and binding on the successors of the grantor, unless the same shall be granted for the working of mines or for the clearing of jungle, or for the erection of dwelling-houses or manufactories, or for tanks, canals and similar works ; and shall be approved by the Commissioner of the division, such approval being certified by an endorsement on the lease under the signature of the Commissioner.

Proviso.

2. If any of the said ghatwali-lands be at any time under the superintendence of the Court of Wards, or otherwise subject to the direct control of the officers of Government, it shall be lawful for the Court of Wards or the Commissioner to grant leases for any such purpose as aforesaid ; and every lease so granted shall be valid and binding on all future possessors of the said lands, anything in the existing law to the contrary notwithstanding.

Court of Wards and Revenue-authorities have like power in certain cases.

ACT No. XI OF 1859.

Received the Governor-General's assent on the 4th of May 1859.

An Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency.

* * * * * *

37. The purchaser of an entire estate in the permanently-settled districts of Bengal, Bihar and Orissa, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement ; and shall be entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants, with the following exceptions :—

Rights of purchaser of permanently-settled estate sold for its own arrears.

First.—Istimrari or mukarari tenures which have been held at a fixed rent from the time of the permanent settlement.

Secondly.—Tenures existing at the time of settlement, which have not been held at a fixed rent.

Provided always that the rents of such tenure shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

Thirdly.—Taluqdari and other similar tenures created since the time of settlement and held immediately of the proprietors of estates and farms for terms of years so held, when such tenures and farms have been duly registered under the provisions of this Act.

Fourthly.—Leases of lands whereon dwelling-houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship or burning or burying grounds have been made, or wherein mines have been sunk.

Leases of lands which may not have been expressly leased for the purpose of making gardens thereon, but on which gardens have subsequently been made, are, under the provisions of Act XI of 1859, section 37, clause 4, protected from avoidance by a revenue auction-purchaser (*Gobind Chandra Sen* v. *Jay Chandra Das*, Ind. 12 Cal. 327). The benefit of this clause is limited to improvements effected *bonâ fide* and to permanent buildings erected before the revenue sales, and is not extended to anything subsequently constructed or which appears to be constructed merely for the purpose of defeating the rights of the auction-purchaser. Subject to this reservation it does not matter whether the improvements have been effected by the present holder or by some previous occupier (*Ajgur Ali* v. *Asmat Ali*, Ind. 8 Cal. 110). In a suit to avoid an under-tenure by the purchasers at an auction-sale for arrears of Government revenue, the defendants contended that the tenure was created prior to the Permanent Settlement, and that the same portion of the lands comprised in it were covered with permanent structures and improvements, and that, accordingly, it was protected under exceptions 1 and 4 to section 37 of Act XI of 1859: but the lower Court gave a decree to the plaintiffs and annulled the under-tenure. *Held*, that notwithstanding a party may fail to show that his tenure was created prior to the Permanent Settlement, yet he is entitled to the benefit of the 4th exception in respect of any permanent structures that may be upon his holding (*Bhago Bibi* v. *Ramkanto Roy Chowdhry*, Ind. 3 Cal. 293).

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent equal to the rent of good arable land for a term exceeding twelve years; but not otherwise.

Proviso.

Provided always that nothing in this section contained shall be construed to entitle any such purchaser as aforesaid to eject any raiyat having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such raiyat otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement may have been entitled to do.

Where, at an auction-sale for arrears of revenue, the Government becomes the purchaser of the property, and afterwards makes settlement with the former proprietors of the under-

tenures, the question whether or not the Government cancelled the under-tenures existing at the time of the sale is one to be decided solely according to the effect of proceedings taken by the Collector in each case (*Shuk Deb Shaha* v. *Srimati Alladi*, 2 Cal. 13). Where at an auction-sale for arrears of revenue, a person purchases a permanently-settled zamindari, his cause of action, for possession of lands which he alleges to have formed a part of his permanently-settled zamindari, and for which he still pays Government revenue, will be held to have arisen at the date of his purchase. Such a purchaser is not barred by adverse possession which has barred the former (defaulting) proprietor, nor by the decrees in suits for possession brought by the former (defaulting) proprietor, in respect of the same lands, and against the same parties (*Narain Chandra Chowdry* v. *Taylor*, 3 Cal. 151).

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Rights of purchaser of estate not permanently settled, sold for its own arrears.

52. The purchaser of an estate in a district not permanently settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with raiyats or the like, settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter or renew, saving always and except leases of lands whereon dwelling-houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship or burning or burying grounds have been made, or where in mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect.

Provided that nothing contained in this section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that, according to the custom of the pargana, mauza, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the regulations of Government.

Rights of purchaser being sharer in estates;

53. Excepting sharers in estates under batwara who may have saved their shares from sale under sections 33 and 34, Regulation XIX, 1814, and sharers with whom the Collector, under sections 10 and 11 of this Act, has opened separate ac-

counts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner ; or who by re-purchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act ; and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself ; shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale and shall not acquire any rights in respect to under-tenants or raiyats, which were not possessed by the previous proprietor at the time of the sale of the said estate.

and of purchaser of estate not sold for its own arrears.

Under this section, a co-proprietor who purchases an estate at a sale for arrears of Government revenue, takes it subject to the incumbrances created by the defaulting proprietor (*Mahamad Gazi Chowdhuri* v. *Leicester*, 7 Beng. App. 52). In November 1862, *A* purchased a portion of an estate sold in execution of a decree against the then proprietor. The sale was not confirmed till 9th February 1863. Default occurred in the payment of Government revenue in January 1863, and the entire estate was put up for sale by the Collector and purchased by *A* on the 29th March 1863: *Held*, that *A*, at the time of the second purchase, was an unrecorded co-partner of an estate within the meaning of section 53 of Act XI of 1859, and therefore took the entire estate subject to all the incumbrances existing at the time of the Government sale for arrears of rent (*Abdul Bari* v. *Ram Das Kundu*, Ind. 4 Cal. 607).

54. When a share or shares of an estate may be sold under the provisions of section 13 or section 14, the purchaser shall acquire the share or shares subject to all encumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

Rights of purchaser of shares of estate.

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ACT No. VII B. C. OF 1868.

Received the Lieutenant-Governor's assent on the 16*th of July* 1868, *and the Governor-General's assent on the* 10*th of August* 1868.

An Act to make further provisions for the recovery of arrears of land-revenue and public demands recoverable as arrears of land-revenue.

WHEREAS it is expedient to amend and extend the law for the recovery of arrears of land-revenue and of public demands recoverable as arrears of land-revenue ; It is declared and enacted as follows :—

Preamble.

Interpretation.

1. In this Act and in Act XI of 1859 (*to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*), the words in this section mentioned shall have the meanings therein attributed to them respectively—

"Proprietor."

the word "proprietor" includes any tenant by whom any estate or tenure is held directly under Government:

"Revenue."

the word "revenue" includes every sum annually payable to Government by the proprietor of any estate or tenure in respect thereof, and every sum payable to Government in respect of takkavi, or of any money advanced by Government to proprietors of land for making or repairing embankments, reservoirs or watercourses, or other improvements on the land held by them:

"Estate."

the word "estate" means any land or share in land subject to the payment to Government of an annual sum in respect of which the name of a proprietor is entered on the register known as the general register of all revenue-paying estates, or in respect of which a separate account may, in pursuance of section 10 or section 11 of the said Act XI of 1859, have been opened:

"Tenure."

the word "tenure" includes all interests in land whether rent-paying or lakhiraj (other than estates as above defined), and all fisheries, which, by the terms of the grants creating the same, or by the custom of the country, are transferable, whether such tenures are resumable or not, and whether the right of selling or bringing them to sale for an arrear of rent may or may not have been especially reserved by stipulation in any instrument:

"Jurisdiction."

the "jurisdiction" of a Collector means the district to which such Collector is appointed, or throughout which any officer vested with the powers of a Collector is authorized to exercise such powers:

"Collector."

the word "Collector" includes any person vested with the powers of a Collector.

Appeals against sales.

2. It shall be lawful for the Commissioner of revenue to receive an appeal against any sale made under this Act or the said Act XI of 1859, so that such appeal be preferred to such Commissioner on or before the sixtieth day from the day of sale, reckoning as in section 23 of the said Act XI of 1859, or be presented to the Collector or other officer

duly authorized to hold sales under the said Act for transmission to the Commissioner on or before the forty-fifth day from the day of sale, reckoning as aforesaid, and not otherwise ; and the Commissioner shall be competent, in every case of appeal so preferred, to annul any sale of an estate or share of an estate made under this Act or Act XI of 1859, which shall appear to him not to have been conducted according to the provisions of the said Acts, awarding at the same time to the purchaser a payment from the proprietor of compensation for his loss, if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed the interest at the highest rate of the current Government securities on the amount of deposit or balance of purchase-money during the period of its being retained in the Collector's office : and the order of the Commissioner shall in such cases be final.

Time for revenue-sales extended.

3. From the date when this Act comes into operation, the word "thirty" shall be substituted for the word "fifteen" in section 6 of the said Act XI of 1859, and the words "or more than thirty" in the same section shall be omitted therefrom, and the said section shall be read as if the same had not been inserted therein.

Time for confirmation of sales extended.

4. From the date when this Act comes into operation, the words "sixtieth" and "sixty" shall be substituted for the words "thirtieth" and "thirty" respectively, wherever the said words occur in section 27 of the said Act XI of 1859.

Mode of serving notices.

5. Every notice in and by this Act, or by the said Act XI of 1859, directed to be served, shall be served by delivering to the person to whom it may be directed, a copy thereof attested by the Collector, or by delivering such copy at the usual place of abode of such person, to some adult male member of his family, or, in case it cannot be so served, by posting such copy upon some conspicuous part of the usual or last-known place of abode of such person.

In case such notice cannot be served in any of the ways hereinbefore mentioned, it shall be served in such way as the Collector issuing such notice may direct.

Power to cause notices to be served of arrears or demands.

6. It shall be lawful for the Lieutenant-Governor of Bengal, by an order published in the *Calcutta Gazette*, to empower all Collectors in any district in such order mentioned, if they shall think fit, to cause such notices as shall be in such order specified to be served upon any proprietors, before proceeding under the provisions of the said Act XI of 1859, or of this Act, to realize from such proprietors any arrears of revenue or any demands which may be due from such proprietors, and the costs of

serving any such notices as shall be served under the powers conferred by any such order, not exceeding such sums as shall in such order be specified, shall be added to any arrears of revenue which may be due from such proprietors, and shall be recoverable as if the same were a portion of such arrears of revenue; and every such order may from time to time be altered, varied or revoked by any other order of the said Lieutenant-Governor to be from time to time in like manner published.

Notices to raiyats to be posted in sub-divisional kachahri.

7. In addition to the notices in and by section 7 of the said Act XI of 1859 directed to be posted, a similar notice shall be posted at the sub-divisional kachahri within the jurisdiction of which the estate to which such notice refers, or some portion thereof, is situate.

Certificate to be conclusive evidence of regularity in service of notices.

8. Every certificate of title which may be given to any purchaser under the provisions of section 28 of the said Act XI of 1859, or of section 11 of this Act, shall be conclusive evidence in favour of such purchaser and of every person claiming under him, that all notices in or by this Act, or by the said Act XI of 1859, required to be served or posted, have been duly served and posted; and the title of any person who may have obtained any such certificate shall not be impeached or affected by reason of any omission, informality or irregularity as regards the serving or posting of any notice in the proceedings under which the sale was had at which such person may have purchased.

A non-compliance with the provisions of section 6 of Act XI of 1859, is not a mere irregularity and is not one of those errors in procedure which are intended to be cured by section 8 of Bengal Act VII of 1868. Where a sale for arrears of revenue has been held and non-compliance with section 6 has been found, such a sale is null and void, as not being a sale under the provisions of Act XI of 1859 (*Lala Mobarak Lal* v. *The Secretary of State for India in Council*, Ind. 11 Cal. 200).

Sales of lakhiraj valid.

9. All sales of lands of lakhiraj tenure which may heretofore have been made in conformity with the procedure established by the said Act XI of 1859, for payment of arrears of revenue or of demands, shall have such and the same force and effect as if they had been made in execution of a decree against the person liable to pay the revenue or demand for satisfaction of which such sale may have been made.

Collectorate to include all estates borne on its roll.

10. Every estate shall, for the purposes of this Act and of the said Act XI of 1859, be deemed to be within the collectorate of the Collector upon whose general register the revenue thereof may be borne, although the whole or any portion of the lands comprised in such estate may be without the local limits of his jurisdiction; but all lands and tenures shall be deemed to be within the jurisdiction within the

local limits of which they may be situate, although the estate of which they form a part may, under the provisions of this section, be deemed to be within the collectorate of any other Collector.

Power to sell tenures.

11. Whenever any revenue payable to Government in respect of any tenure not being an estate shall be in arrear after the latest day of payment fixed in the manner prescribed in section 3 of Act XI of 1859, the Collector to whom such revenue is payable may cause the tenure to be sold in the manner and subject to the provisions in and by the said Act XI of 1859 provided for the sale of estates for the recovery of arrears of revenue, and the Collector shall apply the purchase-money arising from such sale according to the provisions of section 31 of the said Act XI of 1859, except that the residue, if any, shall be held in deposit on account of the holder of the tenure and not on account of the proprietor of the estate; and every such Collector shall, upon every such sale of any tenure being final and conclusive, give to the purchaser thereof such certificate of title thereof as is provided in section 28 of the said Act XI of 1859 with respect to estates :

Provided that no tenure shall be sold for the recovery of arrears of revenue other than those of the current year or of the year immediately preceding, nor for the recovery of arrears of revenue due by tenures under attachment by order of any judicial authority, unless and until after a notification in the language of the district, specifying the nature and amount of the arrear and the latest date on which payment thereof shall be received, shall have been fixed for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of Act XI of 1859, in the office of the Collector or other officer duly authorized to hold sales under this Act, in the court of the Judge within whose jurisdiction the land advertised lies, and in the Munsif's Court and Police-thana of the division in which the tenure to which the notification relates is situated, or if the tenure be situated within the jurisdiction of more than one Munsif's Court or Police-thana, in some one or more of such Courts or thanas, and also at the kachahri of the malguzar or owner of the tenure, or at some conspicuous place upon the tenure, the same to be certified by the peon or other person employed for the purpose.

Effect of sale of tenure.

12. The purchaser of any tenure sold under the provisions of section 11 of this Act shall acquire it free from all encumbrances which may have been imposed upon it after its creation, or after the time of settlement, whichever may have last occurred, and shall be entitled to avoid and annul all under-tenures, and forthwith to eject all under-tenants, with the following exceptions :—

First.—Istimrari or mukarari tenures which have been held at a fixed rent from the time of the permanent settlement :

Secondly.—Tenures existing at the time of permanent settlement, which have not been held at a fixed rent :

Provided always that the rent of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures :

Thirdly.—Tenures created or recognized by the settlement-proceedings of any current temporary settlement, as tenures bearing a rent which is fixed for the period of such settlement :

Fourthly.—Tenures of lands whereon dwelling-houses, manufactories or other permanent buildings have been erected, or whereon permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made.

A person seeking to obtain the benefit of section 12, Bengal Act VII of 1868, must give some *primâ facie* evidence to show that the incumbrance which he seeks to avoid is an incumbrance falling within the terms of the section, that is, an incumbrance imposed on the tenurs by some one who previously held it (*Kailashbashini Dasi* v. *Gokulmoni Dasi*, Ind. 8 Cal. 230).

Power of enhancement.

13. Every purchaser of a tenure under section 11 of this Act shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, unless the same shall have been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

Saving of right of raiyat.

14. Provided always that nothing hereinbefore contained shall be construed to entitle any such purchaser, under section 11 of this Act, to eject any raiyat having a right of occupancy at a fixed rent, or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such raiyat otherwise than in the manner prescribed by such laws, or otherwise than as the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

* * * *

Construction.

30. This Act shall be read with, and taken as part of, the said Act XI of 1859, as modified by Act III of 1862 of the Lieutenant-Governor of Bengal in Council.

ACT No. VII B. C. OF 1880.

Received the assent of the Lieutenant-Governor on the 22nd April 1880, and of the Governor-General on the 26th June 1880.

An Act to amend the Law for the Recovery of certain Public Demands.

Preamble.

WHEREAS it is expedient to amend the law for the recovery of certain dues and debts demandable by Public Officers; It is hereby enacted as follows :—

Short Title.

1. This Act may be called "The Public Demands' Recovery Act, 1880."

Extent.

Notwithstanding anything contained in Section 2, it extends to all the territories for the time being administered by the Lieutenant-Governor of Bengal.

Commencement.

It shall come into operation on and after the date on which it shall be published in the *Calcutta Gazette* with the assent of the Governor-General.

Construction of this Act.

2. This Act, so far as is consistent with the tenor thereof, shall be construed as one with Act XI of 1859, passed by the Governor-General in Council, and Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council. The powers given by this Act shall be deemed to be in addition to, and not in derogation of, any powers conferred by any Act now being in force for the recovery of any due, debt, or demand to which the provisions of this Act are applicable.

Repeal of Acts in Schedule.

3. The Acts specified in the first Schedule annexed to this Act are hereby repealed from and after the commencement of this Act, to the extent specified in the third column of that Schedule: provided that this repeal shall not affect—

(*a*) the past operation of any enactment hereby repealed, nor anything duly done or suffered thereunder:

(*b*) any liability created under any enactment hereby repealed.

Certificate under Bengal Act VII of 1868 to be enforced under this Act.

Every Certificate made under the provisions hereby repealed of Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council, may be enforced under the provisions of this Act.

Definitions.

4. In this Act, unless the context otherwise requires, but not in the other Acts mentioned in Section 2,

"Section."

"Section" means a section of this Act.

"Collector."

"Collector" means (*a*) within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal, the Collector of Calcutta; (*b*) without those limits, the Collector of a District or any officer specially appointed by the Lieutenant-Governor to perform the functions of a Collector under this Act; and (*c*) any officer in charge of a Sub-division of a district whom the Collector of such district, with the sanction of the Commissioner, authorizes to perform such functions as aforesaid.

5. In the following cases, that is to say—

When an estate or tenure has been sold for its own arrears; and the sale-proceeds are insufficient to liquidate the same; or

(1) when, under the provisions of Act XI of 1859, passed by the Governor-General in Council, or of Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council, an estate or tenure has been sold for the recovery of arrears of revenue due thereupon, and, after deducting the expenses of such sale, the balance of the sale-proceeds remaining is insufficient to liquidate the arrears of revenue in discharge of which such sale-proceeds may under the aforesaid provisions be applied;

when arrears of revenue due from a farmer are not paid on latest date of payment;

(2) when arrears of revenue due from a farmer on account of an estate held by him in farm are not paid on the latest day of payment fixed under the provisions of Section 3 of Act XI of 1859, passed by the Governor-General in Council;

the Collector of the district may make a Certificate of the unpaid arrears.

the Collector may make under his hand, and in form No. 1 in the second Schedule annexed to this Act, a Certificate of the amount of arrears so remaining unpaid, and may cause the same to be filed in his office.

Such Certificate shall have the force and effect of a decree of a Civil Court as regards the remedies for enforcing it.

6. (*a*) Subject to the provisions of this Act, every Certificate made under the provisions of Section 5 shall, as regards the remedies for enforcing the same and so far only, have the force and effect of a decree of a Civil Court, and the Secretary of State for India in Council shall be deemed to be the decree-holder, and the person therein named as debtor shall be deemed to be the judgment-debtor.

(*b*) Such judgment-debtor may at any time within one year after the service upon him of such notice as is mentioned in Section 10, bring a suit in the Civil Court to have the said Certificate cancelled on the ground that the arrears stated therein were not due by him ; but no such suit shall be entertained unless such judgment-debtor has paid such arrears to the Collector within one month after being served with the said notice, or, in any case in which he has filed a petition of objection under Section 12, then within fifteen days after such petition has been heard and determined.

Judgment-debtor may bring a suit in the Civil Court to contest his liability, if he has deposited the amount of the Certificate.

(*c*) If no such suit is instituted within the said period of one year, or if any such suit having been so instituted, is decided against such judgment-debtor, such Certificate shall become absolute, and shall have to all intents and purposes the effect of a final decree of a Civil Court.

If no such suit brought within one year, or if brought and decided against judgment-debtor, the Certificate to become absolute, and have effect of a decree of the Civil Court to all intents and purposes.

7. When any arrears of the following Public Demands are unpaid by the person liable to pay the same, that is to say—

When any arrears of a Public Demand is unpaid by the person liable to pay the same,

(1) any sum of money which by any law for the time being in force is declared to be recoverable or realizable as an arrear of revenue or land-revenue, or by the process prescribed for the recovery of arrears of revenue or of the public or Government revenue :

(2) any sum of money due from the sureties of a farmer in respect of the revenue of the estate farmed by him :

(3) any such demand, money, fee, duty, arrear, fine, or costs as is mentioned in the following sections of the following Acts passed by the Lieutenant-Governor of Bengal in Council, that is to say—in Act VIII of 1862, Section 9 ; in Act VI of 1873, Section 50 ; in Act IV of 1875, Section 1 ; in Act V of 1875, Section 57 ; in Act III of 1876, Section 42, Section 73, and Section 85 ; in Act VII of 1876, Section 82 ; in Act VIII of 1876, Section 138 ; in Act VII of 1878, Section 36 : or in the following sections and portions of the following Act passed by the Governor-General in Council, that is to say—in Act VII of 1870, "The Court Fees' Act," Sections 19G, 19H and the note to paragraph 12 of Schedule I :

(4) in the case of a person to whom the collection of tolls has been farmed

under the provisions of Section 8 of "The Canals Act, 1864," or of the sureties of such person—any sum of money due in respect of such farm:

(5) in the case of a person having charge of a ferry subjected to the payment of a yearly rent—any arrear of such rent ascertained and certified as provided in Regulation VI of 1819, Section 10 :

(6) any arrears of revenue or rent payable to the Secretary of State for India in Council from any raiyat, or from any person holding any interest in land, pasturage, forest rights, fisheries, and the like, whether such interest is or is not transferable :

(7) in the case of property which, under the provisions of any law for the time being in force, has been taken under the charge of, or is managed by, the Court of Wards or the Revenue Authorities on behalf of a private individual—any arrears of rent or of other demands recoverable as rent, whether such arrears became due before or after the management devolved upon such Court or such Authorities : provided that this clause shall not apply to any arrears of rent at an enhanced rate, unless such enhanced rate has been agreed to by the person liable to pay the same, or has been confirmed by a competent Court :

(8) any sum payable to a Public Officer of Government in respect of which the person liable to pay the same has agreed by a written instrument duly registered that it shall be recoverable under the provisions of this Act :

(9) any fee, duty, tax, or other demand, which by any Act passed hereafter shall be declared to be recoverable under the provisions of this Act ;

the Collector of the district may make a Certificate of the unpaid demand.

the Collector of the district may make under his hand, and in form No. 2 in the second Schedule annexed to this Act, a Certificate of the amount of such arrears so remaining unpaid, and may cause the same to be filed in his office : provided that no such Certificate shall be made in respect of any such demand, the recovery of which is barred by any law of Limitation for the time being in force.

Such Certificate shall have the same effect as a decree of a Civil Court, as regards the remedies for enforcing the same.

8. (*a*) Subject to the provisions of this Act, every Certificate made under the provisions of Section 7 shall, as regards the remedies for enforcing the same, and so far only, have the force and effect of a decree of a Civil Court. In the cases other than case (7) mentioned in the said Section 7, the Secretary of State for India in Council and in the said case (7) the pri-

vate individual therein mentioned, or, if such private individual be a Minor, Lunatic or Ward of Court, then such Minor, Lunatic, or Ward of Court by his next friend, shall be deemed to be the decree-holder, and in all the cases mentioned the person therein named as debtor shall be deemed to be the judgment-debtor.

Judgment-debtor may bring a suit in the Civil Court to contest the Certificate. If no such suit within one year, or if brought and decided against the judgment-debtor, Certificate to become absolute.

(*b*) Such judgment-debtor may at any time within one year after the service upon him of such notice as is mentioned in section 10 bring a suit in the Civil Court to contest his liability to pay the amount stated in the said Certificate, and to have such Certificate cancelled : but no such suit shall be entertained unless such judgment-debtor has stated in a petition presented to the Collector under Section 12 the ground upon which he claims to have such Certificate cancelled, or unless, having omitted to state such ground in such petition as aforesaid, he can satisfy the Civil Court that there was good reason for such omission. If no such suit is instituted within the said period of one year, or if any such suit having been instituted is decided against such judgment-debtor, such Certificate shall become absolute, and shall have to all intents and purposes the same force and effect as a final decree of a Civil Court.

Provided that no Certificate duly made under the provisions of this Act shall be cancelled by a Civil Court otherwise than on one or more of the following grounds, that is to say—

(1) that the amount stated in the Certificate was actually paid or discharged before the making of such Certificate :

(2) in the case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged, by a Collector or a Public Officer under the provisions of any Regulation or Act for the time being in force—that the proceedings of such Collector or Public Officer were not in substantial conformity with the provisions of such Regulation or Act, and that in consequence the judgment-debtor under the Certificate suffered substantial injury from some error, defect or irregularity in such proceedings :

(3) in cases other than those mentioned in clause (2)—that the amount stated in the Certificate was not due by judgment-debtor under the Certificate :

(4) want of jurisdiction.

Nothing in this proviso shall be construed to interfere with the ordinary

original jurisdiction of the High Court at Fort William in Bengal, or with the jurisdiction of the Calcutta Court of Small Causes.

In case of arrears of public demand payable to Officer other than Collector, such Officer may give notice to Collector.

9. (*a*) When any arrear of any of the public demands specified in Section 7 is unpaid by any person liable to pay such public demand to a Public Officer other than a Collector, or when any such demand as is specified in clause (7) of the said section is unpaid by any person liable to pay the same to a Manager appointed by the Court of Wards, such Officer or such Manager may give to the Collector of the district, in which such person resides, or in which such demand is payable, a notice in writing in form No. 3 in the second Schedule annexed to this Act: provided that no such notice may be given in respect of any such demand, the recovery of which is barred by any law of Limitation for the time being in force.

Such notice given by a Manager to be verified and stamped as a plaint.

(*b*) Every such notice given by a Manager shall be verified by such Manager in accordance with the provisions of the Code of Civil Procedure as to the verification of plaints, and there shall be payable in respect thereof a Court-fee of the same amount as is payable under the Court-fees' Act for the time being in force in respect of a plaint for the recovery of a sum of money equal to that stated in such notice.

Collector may on receipt of such notice make a Certificate.

(*c*) On receipt of such notice, such Collector, if satisfied that such demand is justly recoverable, may make under his hand, and in the form No. 2 in the second Schedule annexed to this Act, a Certificate of the amount of such arrears so remaining unpaid, and shall cause the same to be filed in his office.

(*d*) The provisions of Section 8 shall apply to every such Certificate.

When Certificate filed notice to be given to judgment-debtor. Upon service of notice, Certificate to bind immovable property of judgment-debtor.

10. When a Certificate has been filed in the office of a Collector under the provisions of Section 5, or Section 7, or Section 9, such Collector shall issue to the judgment-debtor a copy of such Certificate and a notice in form No. 4 in the second Schedule annexed to this Act. From and after the service of such notice, such Certificate shall bind all immovable property of such judgment-debtor situate within the jurisdiction of such Collector in the same manner and with like effect as if such immovable property had been attached under the provisions of Section 274 of the Code of Civil Procedure. A copy of such Certificate may be transmitted by post to any other Collector for the purpose of

Copy of Certificate may be sent to Collector of another dis-

trict to be filed in his office; and, upon its being filed, Certificate shall bind immovable property situate in such district.

being filed in his office, and as soon as it is so filed, such Certificate shall, if the aforesaid notice has been served, bind in like manner all immovable property of such judgment-debtor situate within the jurisdiction of such last-mentioned Collector.

Movable property of person, against whom Certificate has been made, may be attached at any time, if Collector satisfied that such person is likely to conceal, remove, or dispose of such property.

11. If in any case other than the case mentioned in clause (7) of Section 7, the Collector is satisfied that any person against whom a Certificate has been filed under the provisions of Section 5, or Section 7, or Section 9, is likely to conceal, or remove, or dispose of the whole or any part of his movable property, and that the realization of the amount of such Certificate will in consequence be delayed or obstructed, he may at any time after making such Certificate direct an attachment of the whole or any part of the movable property of such person. Such attachment shall be made in the manner provided in the Code of Civil Procedure for attaching movable property, and subject to the provisions of Section 266 of the same Code. Such property may be sold for the purpose of satisfying such Certificate, if no petition of objection is filed under Section 12, or if any such petition is filed, then as soon as it has been heard and determined.

Any person served with notice under Section 10 may file a petition of objection.

12. If any person, who has been served with a notice under Section 10, denies his liability to pay the whole or any part of the amount for which such Certificate has been made and filed against him, he may at any time within thirty days after service of such notice or where no such notice has been duly served, within thirty days after the execution of any process for enforcing such Certificate, file a petition, denying his liability as aforesaid, before the Collector by whom such Certificate has been made. Such petition shall be in, or as nearly as possible in, the form No. 5 in the second Schedule annexed to this Act.

Day to be fixed for hearing such petition. Collector to determine the liability of the petitioner. Certain provisions of the Code of Civil Procedure to apply to the inquiry.

13. Such Collector shall fix a day for hearing any such petition so filed, and upon such day, or any subsequent day to which such hearing may be adjourned, shall determine whether such petitioner is liable for the whole or any part of the amount for which such Certificate was made, and may set aside or modify or vary the Certificate accordingly. Every such Collector shall, for the purpose of hearing any such petition and determining as aforesaid, exercise all or any of the powers of a Civil Court in respect of summoning, causing the attendance of, and examining witnesses, and in respect of causing the production of documents; and the provisions of the Code

of Civil Procedure applicable to these matters shall apply to a Collector exercising these powers.

Collector may direct costs of such petition to be paid by the petitioner. Such costs how realized.

14. The Collector shall have full power to direct that the costs of such petition and of the hearing thereof shall be paid by the petitioner, and in any case in which a Collector directs the payment of such costs by any such petitioner, the amount thereof shall, if such petitioner be the judgment-debtor, be added to the amount entered in the Certificate, and shall be recoverable as if the same had been originally entered therein.

Collector may refer petition for hearing to Deputy Collector, Assistant Commissioner, &c., who shall have the same powers to hear it as the Collector.

15. The Collector of a district may refer to any Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner subordinate to him, any such petition as is mentioned in Section 12, and such Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner shall hear and determine such petition accordingly. The provisions of Sections 13 and 14 shall be applicable to any such Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner to whom any such petition has been so referred.

Appeal from Deputy Collector, Assistant Commissioner, &c., to Collector, and from Collector to Commissioner. Stay of execution.

16. An appeal from any order of a Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner may be preferred to the Collector within fifteen days, and an appeal from any original order of a Collector may be preferred to the Commissioner within thirty days after the making of such order respectively. Pending the decision of such appeal, execution may be stayed, if the Appellate Authority so direct, but not otherwise.

Power of revision.

17. There shall no appeal, as of right, lie from any order of a Collector passed on appeal from an order of a Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner; but the Commissioner may, in any case in which he thinks fit, revise any order passed by a Collector or Deputy Collector or Assistant Commissioner or Extra Assistant Commissioner.

Certificate may be enforced after one month from notice, or when petition of objection disposed of.

18. Every Certificate made under the provisions of Section 5, or Section 7, or Section 9, may be enforced and executed, upon the expiry of one month after service of the notice mentioned in Section 10, or when any such petition as is mentioned in Section 12 has been filed, then as soon as such petition has been heard and determined.

19. Such Certificate may be so enforced and executed by all or any of the ways and means mentioned and provided in and by the Code of Civil Procedure for the enforcement and execution of decrees for money, and all the practice and procedure provided by the said Code of Civil Procedure

Certificate may be enforced under the provisions of the Code of Civil Procedure as a decree for money.

in respect of sales in execution of decrees ; in respect of raising the amount of a decree otherwise than by sale of immovable property under the provisions of Sections 305, 320, 322, 323, and 324 of the said Code ; in respect of arrests in execution of decrees for money ; in respect of the execution of decrees by imprisonment ; in respect of insolvent judgment-debtors ; in respect of claims to attached property ; in respect of resistance to execution ; and in respect of the execution of decrees out of the jurisdiction of the Courts by which they were passed,

shall apply to every execution issued to enforce such Certificate and realize the amount recoverable thereunder, save that all the duties, powers, and authorities by the said Code imposed or conferred on the Court shall be exercised by the Collector in whose office any such Certificate, or any copy thereof transmitted for execution under the provisions of Section 223 of the said Code has been filed. Subject to the control of the Collector and save and except in respect of the provisions relating to insolvent judgment-debtors, any of the said duties, powers, and authorities may be exercised by any Deputy Collector, Assistant Commissioner, or Extra Assistant Commissioner subordinate to such Collector.

20. If any immovable property is sold in execution of a Certificate under the provisions of Section 18, and if such Certificate is subsequently set aside by a competent Court, such Court may set aside such sale of such immovable property, and in any case in which such sale is so set aside, such Court shall direct that the amount of the purchase-money be refunded to the purchaser with or without interest, as such Court thinks fit : provided that no such sale shall be so set aside unless such purchaser has been made or added as a party to the suit brought to set aside such Certificate.

Sale of immovable property may be set aside, if Certificate is set aside by a competent Court.

Proviso.

21. Every Collector shall cause to be kept in his office a Register in such form as may from time to time be prescribed by Board of Revenue and shall cause to be entered in such Register the particulars of every Certificate made under this Act, which, or a copy of which, has been filed in his office. Such Register shall be open during office hours to the inspection of any one desiring to inspect the same, and a fee of eight annas, or such fee not exceeding eight

Register of Certificates to be kept in Collector's office and to be open to inspection on payment of fee of eight annas.

annas as the Beard of Revenue may prescribe, shall be chargeable for such inspection.

Payment of sum due under a Certificate may be made by instalments. Payment of instalment to be entered in Register.

22. (*a*) Payment of the amount due under a Certificate may be made by instalments, if the Collector who made such Certificate so direct. The payment of any instalment shall be entered in the Register mentioned in Section 21.

When total amount satisfied, Collector to enter satisfaction on Certificate and in Register;

(*b*) When the total amount due under a Certificate has been paid and satisfied, the Collector in whose office such Certificate was originally filed shall enter satisfaction upon such Certificate under his hand and signature ; and shall cause the same to be entered in the Register mentioned in Section 21.

and to communicate it to other Collector in whose office a copy of such Certificate has been filed.

(*c*) When a copy of such Certificate has been transmitted to another Collector, or when such Certificate has been made under the provisions of Section 9 upon notice from a Public Officer other than a Collector or from a Manager appointed by the Court of Wards, such satisfaction shall be communicated to such other Collector or to such Officer, or to such Manager.

Sum levied by Collector to whom copy of Certificate sent to be transmitted to Collector who made Certificate.

(*d*) When a sum has been levied or received by a Collector in respect of a Certificate a copy of which has been transmitted to him and filed in his office, such Collector shall send such sum to the office in which such Certificate was originally made.

Collector, Deputy Collector, Assistant Commissioner, Extra Assistant Commissioner and Public Officer to be deemed to be acting judicially in the discharge of his duties under this Act.

23. Every Collector, Deputy Collector, Assistant Commissioner and Extra Assistant Commissioner and every such Public Officer as is mentioned in Section 9 shall, in the discharge of his functions under this Act, be deemed to be a person acting judicially within the meaning of Act XVIII of 1850, passed by the Governor-General in Council.

Collectors, &c., to be subject to the supervision and control of Commissioners and Board in discharge of their duties under this Act.

24. All Collectors, Deputy Collectors, Assistant Commissioners, and Extra Assistant Commissioners shall, in the performance of their duties under this Act, be subject to the general supervision and control of the Commissioners of Divisions and the Board of Revenue.

FIRST SCHEDULE—(*See Section* 3.)

Number and year.	Subject of Act.	Extent of repeal.
	Acts passed by the Lieutenant-Governor of Bengal in Council	
VIII of 1862 ...	An Act to improve the system of zamindari dâks in the provinces subject to the Government of Bengal.	In section 9, the words from and including "which said double amount" to and including "making default."
VII of 1868 ...	An Act to make further provision for the Recovery of Arrears of Land Revenue and Public Demands recoverable as Arrears of Land Revenue.	In section 1, from and including the words "The word 'Demand' means" to the end of the section. In section 2, the words "not being a sale made under, and by virtue of, any execution issued upon a certificate made as hereinafter is provided." In section 6, the words "or persons liable to any demands," "or persons," "or any demands," "or persons," "or to any demands," "or persons," and "or of such demands." Sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.
VI of 1873 ...	An Act to amend the law relating to Embankments and Water-courses.	Section 50, from and including the words "under the provisions" to the end of the section.
I of 1875 ...	An Act for the Realization of Arrears in Government Estates.	The whole Act.
IV of 1875 ...	An Act to provide for the summary realization of sums due on account of loans made by the Government during the late famine operations.	Section 1, from and including the words "within the meaning" to the end of the section.
V of 1875 ...	An Act to provide for the Survey and Demarcation of Land	In section 57, from and including the words "under section 2" to the end of the section.

Number and year.	Subject of Act.	Extent of repeal.
	Acts passed by the Lieutenant-Governor of Bengal in Council.—(Concld.)	
III of 1876 ...	An Act to provide for Irrigation in the Provinces subject to the Lieutenant-Governor of Bengal.	In section 42, from and including the words "under the provisions" to the end of the section. In section 73, from and including the words "under the provisions" to the end of the section. In section 85, from and including the words "under the provisions" to the end of the section.
VII of 1876 ...	An Act to provide for the Registration of Revenue-paying and Revenue-free lands, and of the proprietors and managers thereof.	In section 82, from and including the words "under section" to the end of the section.
VIII of 1876 ...	An Act to make better provision for the Partition of Estates.	In section 138, from and including the words "under section" to the end of the section.
VII of 1878 ...	An Act to consolidate and amend the law relating to the Excise Revenue in the Presidency of Fort William in Bengal.	In section 36, from and including the words "or by the process" to the end of the section.
IX of 1879 ...	An Act to amend the law relating to the Court of Wards.	Section 63.
	Regulations of the Bengal Code.	
III of 1794 ...	A Regulation for exempting proprietors of land (with certain exceptions) from being confined for arrears of Revenue; and for prescribing the process by which tehsildars are to demand payment of arrears; and for enabling the Collectors to recover from Native officers employed under them public money or papers which they may embezzle or retain, &c.	Section 12. Sections 16, 17, 18, 19 and 20, so far as they relate to the recovery of money belonging to Government.

SECOND SCHEDULE.

FORM No. 1 (*See Section* 5).

Certificate of Arrears of Revenue filed in the Office of the Collector of the District of (name of District).

No. of Certificate.	Name of Debtor.	Address of Debtor.	Amount of Arrears of Revenue for which this Certificate is made, and period for which such Arrears are due.	Estate or tenure for which Arrears of Revenue due.

I hereby certify that the above-mentioned sum of Rs. is due to the Secretary of State for India in Council from the above-named

Dated this *day of* *18* . A. B.,

Collector of

FORM No. 2 (*See Sections* 7 *and* 9).

Certificate of Arrears of Public Demands filed in the Office of the Collector of the District of (name of District).

No. of Certificate.	Name of Debtor.	Address of Debtor.	Amount of the Public Demand for which this Certificate is made.	Particulars of Public Demand for which this Certificate is made and Public Officer [*or* Manager, *and* of what estate] to whom due.

I hereby certify that the above-mentioned sum of Rs. is due to the Secretary of State for India in Council [*or* to A. B., a Ward of Court, *or* a Minor, *or* a Lunatic, by his next friend C. D.] from the above-named

Dated this day of 18 . A. B.,
Collector of

FORM No. 3 (*See Section* 9).

NOTICE OF DEMAND.

To the Collector of the District of

Name of Debtor.	Address of Debtor.	Amount of Public Demand for which this Notice is given.	Nature of the Public Demand for which this Notice is given.

The above sum of Rs. is due from the said
in respect of
Certified this day of

A. B.

FORM No. 4 (*See Section* 10).

NOTICE.

To (*insert name of judgment-debtor*).

You are hereby informed that a Certificate for Rs. , due from you on account of , has been this day made by me against you under the provisions of section of Act of 1880, passed by the Lieutenant-Governor of Bengal in Council, and that such Certificate has been filed in this office. If you deny your liability to pay the said sum of Rs. , you may within thirty days show cause why such Certificate should not be executed. If you fail to show cause within

thirty days, or do not show sufficient cause, such Certificate will be executed in the same manner as if it were a decree of a Civil Court for the said sum of Rs. unless you pay the amount into this office. Until such amount is paid, you are hereby prohibited from alienating your immovable property or any part of it by sale, gift, mortgage, or otherwise.

A copy of the Certificate above-mentioned is hereto annexed.

Dated this *day of* *18* . A. B.,

Collector of

FORM No. 5 (*See Section* 12).

To

THE COLLECTOR OF THE DISTRICT OF

The humble petition of (*name of petitioner*) of (*address*).

SHEWETH—

That a Certificate No. for the sum of Rs. has been filed against your petitioner in your office under the provisions of section of Act of 1880 passed by the Lieutenant-Governor of Bengal in Council.

That your petitioner respectfully denies his liability to pay the said sum of Rs. (or, where the liability to pay part is admitted, denies his liability to pay more than Rs.), and this for the following reasons :—

That the facts above stated are true to the best of your petitioner's knowledge and belief.

Your petitioner therefore respectfully prays that the said Certificate may be set aside (*or* modified *or* varied).

ACT No. V B. C. OF 1875.

An Act to provide for the Survey and Demarcation of Land.

* * * * * *

Recovery of sums payable to zamindar or tenure-holder.

38. Every zamindar or tenure-holder to whom any sum is payable under the preceding sections, may recover the same with interest as aforesaid in the manner provided by any law for the time being in force for the recovery of arrears of rent in respect of the tenure for which the sum is due.

ACT No. III B. C. OF 1876.

An Act to provide for Irrigation in the Provinces subject to the Lieutenant-Governor of Bengal.

* * * * * * *

83. Any sum lawfully due under this Part (VII), either to the Government, or to any person who has entered into an agreement to collect dues for the Government and certified by the canal-officer to be so due, shall be deemed to be rent payable on a patta or engagement in respect of the land irrigated, and shall be recoverable as such by the person to whom it is payable :

Sum payable under this Part deemed to be rent.

Provided that the claim (if any) for rent in respect of such land shall have priority over any claim for arrears of water-rate so far as regards recovery of rent by the exercise of the power of restraint.

ACT No. VII B. C. OF 1876.

An Act to provide for the Registration of Revenue-paying and Revenue-free Lands and of the Proprietors and Managers thereof.

* * * * * *

78. No person shall be bound to pay rent to any person claiming such rent as proprietor or manager of an estate or revenue-free property in respect of which he is required by this Act to cause his name to be registered, or as mortgagee, unless the name of such claimant shall have been registered under this Act ;

No person bound to pay rent in excess of recorded interest of claimant.

and no person being liable to pay rent to two or more such proprietors, managers or mortgagees holding in common tenancy, shall be bound to pay to any one such proprietor, manager, or mortgagee more than the amount which bears the same proportion to the whole of such rent as the extent of the interest in respect of which such proprietor, manager, or mortgagee is registered bears to the entire estate or revenue-free property.

79. The receipt of any proprietor, manager, or mortgagee, whose name and the extent of whose interest is registered under this Act, shall afford full indemnity to any person paying rent to such proprietor, manager, or mortgagee.

Indemnity to persons paying rent to registered proprietor, manager, or mortgagee.

ACT No. VI B. C. OF 1880.

An Act to provide for the Drainage and Improvement of Lands.

* * * * * *

Proprietor may recover from subordinate tenants.

42. Every landholder who has been charged with any sum by a Report published as aforesaid may, after he has paid or engaged to pay the same,—

(*a*) proceed under any law for the time being in force to enhance the rents of any person holding immediately from him any land, the productive powers of which have been increased by any works carried out under this Act, provided that any such person may at his option elect to pay under clause (*b*) of this section : or

(*b*) recover such sum or any part thereof, according to the proportions hereinafter provided, with interest at the rate of five per cent. per annum from the date of payment by him of any portion thereof, from the persons holding immediately from him lands in respect of which such sum has been declared payable and which have been benefited by any scheme or works carried out under this Act.

(*c*) The sum recoverable by such landholder from each such person under clause (*b*) in respect of the lands of each class shall bear the same proportion to the sum charged upon such landholder in respect of all lands of that class as the area of the lands of that class which are held by such person bears to the area of the lands of the same class in respect of which the landholder has been charged. No person from whom a landholder is authorized to recover any sum under this section shall be liable to pay in any one year more than one-tenth part of the total sum so recoverable from him, and no person shall be liable to pay in one year more than the increased annual value of the lands in respect of which the payment is made.

Recovery by superior tenant.

43. Any superior tenant, who has made any payment to a landholder under the provisions of clause (*b*) of section 42, may

(*a*) proceed under any law for the time being in force to enhance the rents of any person holding directly from him lands the productive powers of which have been increased by any works carried out under this Act, provided that any such person may at his option elect to pay under clause (*b*) of this section : or

(*b*) recover the sum or part of the sum which has been so paid by him accordingly to the proportions and subject to the rules laid down in clause (*c*) of section 42, with interest at the rate of five per centum per annum from the date of payment by him of any portion thereof, from the persons holding directly from him lands in respect of which the payment has been made, and which have been benefited by any scheme or works carried out under this Act.

Mode and time of payment.

44. (1) The sum payable to a landholder or superior tenant in any one year under clause (*b*) of section 42 or under clause (*b*) of section 43 shall be payable by equal instalments upon the days appointed for the payment to such landholder or superior tenant of the rent of the lands concerned, and shall be recoverable as if the same were an arrear of rent.

Provision in case of dispute as to the amount to be paid.

(2) If such landholder or superior tenant and any person holding lands directly from him cannot agree as to the amount which such person shall pay, such landholder or superior tenant may serve such person through the Collector with a notice setting forth the amount which he claims, and requiring such person, within one month after the service of such notice, to pay the amount claimed or enter into an engagement for the payment thereof by instalments extending over a period of not more than ten years, or appear before the Collector and object.

Collector to decide objection.

(3) If such person do not within the said period of one month appear and object, the amount set forth in such notice shall be recoverable with interest at five per centum per annum. If such person appear and object, the Collector shall dispose of such objection, and his decision shall be final. The Collector may direct that any sum of money payable under his decision, together with any cost awarded by him, be paid by instalments extending over a period of not more than ten years. The provisions of clause (1) of this section shall apply to every sum payable according to an order of the Collector passed under this section.

Proviso.

45. No person from whom any sum has been recovered under clause (*b*) of section 42 or under clause (*b*) of section 43 shall be subject to any claim for enhanced rent on account of the benefit caused by the works to his lands.

ACT No. IX B. C. OF 1880.

An Act to amend and consolidate the law relating to rating for the Construction Charges and Maintenance of District Communications and other Works of public utility, and of Provincial Public Works.

* * * * * *

No rent to be recovered till return is made.

19. From and after the expiry of the time allowed by the notice, or of any extended time under the provisions of section 17, every holder of an estate or tenure in respect of which such notice has been served shall be precluded from suing for or recovering rent for any land or tenure situate in any estate or tenure in respect of which no return has been lodged as aforesaid.

The Collector may send a list to the Civil Court of all such holders so making default in lodging returns as aforesaid, and such Court shall take judicial notice of the same.

Whenever the required return is lodged in respect of any estate or tenure, or whenever the valuation of any such estate or tenure has been otherwise completed, the disablility imposed on the holder thereof by this section shall cease; and if such estate or tenure shall have been included in any list as aforesaid, the Collector shall forthwith give notice to the Civil Court of the cessation of such disability.

No rent to be recovered for land, &c., not mentioned in return.

20. Every holder of an estate or tenure in respect of which a return has been made as required by this chapter shall be precluded from suing for or recovering—

(*a*) any rent whatsoever for any land, holding or tenure forming part of the estate or tenure to which such return relates, but which has not been mentioned in such return, unless it be proved that the holding or tenure for the rent of which the rent is claimed was created subsequently to the lodging of such return;

(*b*) rent at higher rate than is mentioned in such return for any land, holding or tenure included in such return, unless it be proved that the rent of such land or tenure has been lawfully enhanced subsequently to the lodging of such return:

Proviso.

Provided that the Collector may at his discretion, at any time within six months from the presentation of any return made under this Part, receive a petition correcting any such return;

and on the acceptance of such petition may make such correction in the valuation of the estate or tenure as may be required;

and as soon as the person in respect of whose estate or tenure the return and valuation have been so corrected, shall have paid in all sums due by him as road-cess and public-works cess in accordance with such corrected valuation, and not otherwise, such person may recover such rent as may be due to him on any tenure or land included in the return of such estate or tenure at any rate not being in excess of the rate shown in the corrected return as payable in respect of such tenure or land.

Corrected.

Such notices as the Collector may direct shall be served upon the parties affected by such petition at the expense of the person lodging the return as aforesaid.

Bhaoli lands are to be included in the returns. Where such lands are not included the holder of the estate or tenure is precluded from suing for or recovering any rent due therefrom (*Jagamohan Tewari* v. *Finch*, Ind. 9 Cal. 62).

* * * * * *

41. Except as otherwise in this Act provided—

(1) Every holder of an estate shall yearly pay to the Collector the entire amount of the road-cess and public-works cess calculated on the annual value of the lands comprised in such estate, at the rate or rates which may have been determined for such cesses respectively for the year as in this Act provided, less a deduction to be calculated at one-half of the said rates for every rupee of the revenue entered in the valuation roll of such estate as payable in respect thereof.

Mode of payment of road-cess and public-works cess by holder of estate.

(2) Every holder of a tenure shall yearly pay to the holder of the estate or tenure within which the land held by him is included, the entire amount of the road-cess and public-works cess calculated on the annual value of the land comprised in his tenure at the rate or rates which may have been determined for such cesses respectively for the year as in this Act provided, less a deduction to be calculated at one-half of the said rates for every rupee of the rent payable by him for such tenure.

By holder of tenure.

(3) Every cultivating raiyat shall pay to the person to whom his rent is payable one-half of the said road-cess and public-works cess calculated at the said rate or rates respectively upon the rent payable by him, or upon the annual value ascertained under the provisions of sections 24 or 25 of the land held by him.

By cultivating raiyat.

A chakeran or service tenure comes within the meaning of tenure in the Cess Act and is, therefore, liable for road-cess and public-works cess (*Jay Sarkar Ray* v. *Sidhi Mohaun*, 7 Cal. 373). A jalkar does not impart any interest in the soil itself and therefore a patni of a jalkar is not liable for road-cess and public-works cess (*David* v. *Giris Chandra Guha*, Ind. 9 Cal. 183).

42. (1) Every holder of a revenue-paying estate shall pay the amount of road-cess and public-works cess due by him in equal instalments on the several days fixed under the provisions of section 3 of Act XI of 1859, or of any similar Act at the time being in force for the payment of arrears of revenue due in respect of his estate, or, if such revenue be payable in one annual sum, then on the day fixed for the payment of such sum.

Time of payment by holder of an estate.

(2) Every holder of a revenue-free estate shall pay the amount of road-cess and public-works cess due by him in two equal instalments, or in one annual payment upon such days or day as shall be for that purpose appointed by any order of the Lieutenant-Governor.

(3) Every holder of a rent-paying tenure and every cultivating raiyat shall pay the amount of road-cess and public-works cess due by him in instalments in the proportion of the instalments of rent payable in respect of the tenure or holding of such tenure-holder or raiyat;

By cultivating raiyat.

Provided that in cases in which, according to local usage or to the terms of any agreement, no part of such rent falls due before the end of the year on account of which it is payable, the tenure-holder or raiyat shall pay the amount of road-cess and public-works cess due by him in two equal instalments upon such days as shall be for that purpose appointed by any order of the Lieutenant-Governor.

* * * * * *

47. Every holder of an estate or tenure to whom any sum may be payable under the provisions of this Act may recover the same with interest at the rate of twelve-and-a-half per centum per annum in the same manner and under the same penalties as if the same were arrears of rent due to him.

Recovery by holders of estate or tenures.

A plaintiff in a suit for arrears of road and public-works cesses is entitled to claim and recover damages (*Saroda Prasad Ganguli* v. *Monomohini Debi*, 10 Cal. 223).

* * * * * *

50. All lands held without payment of rent other than lands mentioned in section 33, and other than estates entered on the General Register of revenue-free lands of the district, shall, for the purposes of this Act, be deemed to form a part of any tenure within the local boundaries of which they are contained; and if they are not contained within the local boundaries of any tenure, then to form a part of any estate within the local boundaries of which they are contained; and if they are not contained within the local boundaries of any estate, then to form a part of the estate in which they were included at the original settlement of such estate; and if there be any doubt as to the estate in which they were so included,

Rent-free lands in what estates or tenures to be included for the purposes of this Act.

then to form a part of such conterminous estate as the Collector, in whose district such conterminous estate is situate, shall by an order under his seal appoint.

* * * * * *

Owner of rent-free land bound to pay cess at full rate.

56. After publication of the extracts from the roll as provided in section 52, and in cases in which publication of the notice mentioned in section 54 is required, after publication of such notice, and not otherwise, every owner and holder of any rent-free land included in such extracts and every person in receipt of the rents and profits or in possession and enjoyment of such land shall be bound to pay year by year to the holder of the estate or tenure in the return of which such land has been included, the amount of the road-cess and public-works cess which may thereafter become due to such holder calculated on the annual value of such land as entered in such extracts, or on any other annual value which may have been determined by the Collector under section 53, at the full rate or rates which may have been fixed under this Act for the levy of such cesses respectively in the district generally for the year.

Instalments to be fixed by Lieutenant-Governor.

57. The payment of the cesses for each year by the holder of any land which is held rent-free shall be made by two equal instalments, or in one payment, upon such days or day as shall be for that purpose fixed by the Lieutenant-Governor.

If instalments not paid within a month, double the amount may be recovered.

58. When an instalment of the cesses due on any rent-free land is not paid to the holder of the estate or tenure to whom it is due within one month of the date on which such instalment is payable, such holder shall be entitled to recover a sum equal to double the amount of such instalment due to him under sections 56 and 57, with interest on such sum calculated at the rate of twelve-and-a-half per centum per annum from the date on which such instalment was payable, and with all costs of suit.

Provided that such holder shall have paid to the Collector all sums due to such Collector up to date in respect of road-cess and public-works cess, and not otherwise.

* * * * * *

Holders of estates, &c., how to recover from holders of rent-free lands.

64A. All sums due to the holder of any estate or tenure under the provisions of this chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation :

Provided that, if any such objection as is mentioned in section 53 has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subjects of such objection, until such objection shall have been disposed of by the Collector.

Owner, holder or occupier of rent-free lands may be sued.

64B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer.

Decree against occupier tantamount to decree against owner.

Occupier may deduct cess paid from rent.

65. Whenever any occupier of land which is held rent-free by the owner thereof shall have paid any sum as cess due in respect of such land to any holder of an estate or tenure to whom such cess is payable, such occupier shall be entitled to deduct the sum so paid by him from the rent next thereafter payable by him to the owner of such land, until such sum is fully adjusted.

* * * * * *

Returns evidence against the maker only.

95. Every return filed by or on behalf of any person in pursuance of the provisions of this Part, shall bear the signature and address of such person, or his authorized agent, and shall be admissible in evidence against such person, but shall not be admissible in his favour.

ACT No. II B. C. OF 1882:

An Act to amend the law relating to Embankments and Watercourses.

* * * * * *

Recovery by zamindars and tenure-holders.

74. Every zamindar or tenure-holder to whom any sum or instalment thereof is payable under an order made in pursuance of section 68 may recover the same with interest as aforesaid in the manner provided for the recovery of arrears of rent in respect

of patni-tenures by the provisions of clauses 2 and 3 of section 8, sections 9, 10, 14, 15, and clauses 1, 2, and 3 of section 17 of Regulation VIII of 1819, as amended by Bengal Act VIII of 1865, or by the provisions of any similar Act for the time being in force; provided that the right or interest of any person holding from the defaulter shall not be affected by any sale held under these provisions.

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